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Letter dated 19 November 2018 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Residual Mechanism for Criminal Tribunals, submitted pursuant to paragraph 16 of Security Council resolution 1966 (2010).

I should be grateful if you would have the present letter and its annexes circulated to the Security Council.

(*Signed*) Theodor **Meron**

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Annex I

[Original: English and French]

Assessment and progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, for the period from 16 May to 15 November 2018

1. The present report, the thirteenth in a series, is submitted pursuant to Security Council resolution 1966 (2010), by which the Council established the International Residual Mechanism for Criminal Tribunals and, in paragraph 16 of that resolution, requested the President and the Prosecutor of the Mechanism to submit reports every six months to the Council on the progress of the work of the Mechanism.[1] Certain information contained in the present report is submitted pursuant to the Council's requests in paragraph 20 of its resolution 2256 (2015) and paragraph 9 of its resolution 2422 (2018).

I. Introduction

2. The Security Council, by its resolution 1966 (2010), established the International Residual Mechanism to carry out a number of essential functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, including the trial of fugitives who are among the most senior leaders suspected of being primarily responsible for crimes, after the closure of the two Tribunals. Pursuant to the same resolution, the Mechanism shall operate for an initial period of four years, and subsequently for periods of two years, following reviews of its progress, unless the Council decides otherwise.

3. In accordance with its mandate, and as set forth below, the Mechanism has assumed responsibility for a number of functions of both International Tribunals, including with regard to a range of judicial activities, the enforcement of sentences, the protection of victims and witnesses and the management of archives. During the reporting period, the Mechanism was actively engaged in carrying out these responsibilities.

4. Notably, the Mechanism continues to be in a period of heightened judicial activity, with the ongoing trial in the *Stanišić and Simatović* case, appeal proceedings in the *Karadžić* and *Mladić* cases, referral and pretrial proceedings in the *Turinabo et al.* case and a host of other judicial matters, including in relation to a request for review of judgment, access to confidential information and allegations of contempt. Owing to extensive disclosure related to the *Turinabo et al.* contempt case, the review hearing in the *Ngirabatware* case, originally scheduled for 24 to 28 September 2018 at the Arusha branch of the Mechanism, was adjourned and proceedings are ongoing to determine if and when the hearing should be rescheduled. Alongside this judicial activity, the Mechanism made important advances during the reporting period in relation to its other residual functions, further developed its legal and regulatory framework and continued its efforts to implement recommendations of the Office of Internal Oversight Services (OIOS) (see paras. 121–124 below).

5. Although the Mechanism continued to make significant progress in the fulfilment of its mandate, it faced a number of challenges during the reporting period. It has long been anticipated that the Mechanism would face new hurdles following

[1] Unless otherwise specified, figures discussed in the present report are accurate as at 15 November 2018.

the closure of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, upon whose support and services the Mechanism has depended from its inception. However, following the decision by the General Assembly in December 2017 not to approve the Mechanism's proposed budget for the biennium 2018–2019, the Mechanism had to reconsider much of its long-term planning, substantially reconfigure a wide range of its operations and develop and commence the implementation of an expenditure reduction plan to reduce the size of its staff as well as a number of non-post resources. This resulted in the submission of a revised and significantly reduced budget proposal for the biennium, which was approved by the Assembly in July 2018.

6. These reductions have left the Mechanism with depleted staffing levels in many areas, as well as reduced non-post resources. This situation exposes the Mechanism to considerable operational risks that may have a negative impact on its ability to conduct and complete its functions in a timely and effective manner and have already forced the Mechanism to postpone or delay a variety of planned activities. Examples of the impact of the reductions are discussed below. All of these reductions and the overall uncertainty continue to decrease staff morale and increase the risk of attrition of staff as well as of loss of institutional knowledge.

7. Notwithstanding these challenges, the Mechanism is determined to effectively and efficiently fulfil its mandate. The Mechanism remains guided in its activities by the Security Council's vision of it as a small, temporary and efficient structure, the functions and size of which will diminish over time, with a small number of staff commensurate with its reduced functions. The Mechanism seeks to maximize effectiveness and efficiency across both of its branches and is actively pursuing new ways to improve its operations, procedures and working methods and to maintain flexibility in staff assignments insofar as possible. In performing its functions, including in the areas of human resources management and recruitment, the Mechanism is guided by and observes in full all applicable rules and procedures. For instance, no case concerning Mechanism recruitment was brought before the Organization's internal justice system during the reporting period.

8. The Mechanism remains mindful of the temporary nature of its mandate. Wherever possible, detailed projections of the duration of residual functions entrusted to the Mechanism are reflected in the present report, in accordance with Security Council resolutions 2256 (2015) and 2422 (2018). Such projections are based on available data and, as a consequence, are at the present stage of the Mechanism's work both limited in nature and necessarily subject to modification in the event of evolving circumstances.

II. Structure and organization of the Mechanism

9. In accordance with its statute (see Security Council resolution 1966 (2010), annex 1), the Mechanism has a single set of principals — the President, the Prosecutor and the Registrar — who have responsibility over two branches, one located in Arusha, United Republic of Tanzania, and the other in The Hague, Netherlands. As mandated, the Mechanism commenced operations at its Arusha branch on 1 July 2012, assuming functions derived from the International Criminal Tribunal for Rwanda. The branch in The Hague commenced operations on 1 July 2013, assuming functions derived from the International Tribunal for the Former Yugoslavia.

A. Organs and principals

10. Article 4 of the statute of the Mechanism provides that the Mechanism shall consist of three organs: the Chambers; the Prosecutor; and the Registry, to provide administrative services for the Mechanism. The respective workload of the Chambers and of the Registry is set forth below.

11. The President of the Mechanism is Judge Theodor Meron, who is based primarily at the branch in The Hague. In June 2018, Judge Meron was reappointed to serve as President until 18 January 2019. Judge Carmel Agius was appointed to serve as his successor, with effect from 19 January 2019 until 30 June 2020. The Prosecutor, Serge Brammertz, and the Registrar, Olufemi Elias, are based primarily at the Arusha branch. In June 2018, Prosecutor Brammertz was reappointed to a new term with effect from 1 July 2018 until 30 June 2020.

B. Judges

12. Article 8 of the statute of the Mechanism provides that the Mechanism shall have a roster of 25 independent judges. Pursuant to article 8, paragraph 3, of the statute, judges shall only be present at the seats of the branches of the Mechanism as necessary at the request of the President to exercise the functions requiring their presence. In so far as possible, and as decided by the President, the functions may be exercised remotely.

13. In June 2018, and further to Security Council resolution 2269 (2016) and article 10, paragraph 3, of the statute of the Mechanism, the Secretary-General reappointed 23 of the 25 judges for a new two-year term, with effect from 1 July 2018 to 30 June 2020. Of the two remaining judges, one declined to seek reappointment while the reappointment of the other was denied. As stated in the letter of the President of the Council to the Secretary-General dated 2 August 2018 (S/2018/756), the members of the Council have decided that two judges should be elected to the roster of judges of the Mechanism in accordance with article 10 of the statute.

14. On 2 October 2018, Judge Mparany Mamy Richard Rajohnson sadly passed away. It is anticipated that the Secretary-General will appoint another judge to serve the remainder of Judge Rajohnson's term.

15. In furtherance of the effective and transparent management of the Mechanism, during the reporting period, the President continued his practice of providing regular written updates and briefings to his fellow judges on matters related to the work of the Chambers and of the Mechanism as a whole.

16. On 26 September 2018, the President convened a plenary of the judges, conducted by remote written procedure in accordance with the Rules of Procedure and Evidence of the Mechanism. During the plenary, which concluded on 6 November 2018, the judges considered certain matters related to the internal functioning of the Mechanism and adopted amendments to the Rules of Procedure and Evidence.

C. The branches

17. In accordance with article 3 of the statute of the Mechanism, the Mechanism's two branches have their seats in Arusha and The Hague, respectively. The Mechanism continues to enjoy excellent cooperation with the host State at each of its two branches, in accordance with the headquarters agreement in place for each branch.

18. The new premises of the Arusha branch have been in use since 5 December 2016. During the reporting period, the technical set-up of the courtroom was completed, offering a fully functional, state-of-the-art court facility. On 13 September 2018, the courtroom hosted the initial appearance of five accused in the *Turinabo et al.* case. Regarding the premises as a whole, the post-construction phase of the project is nearing completion and is focused on the completion of the transition from project management to facilities management, the final closure of the project account and the correction of technical defects in the archives building. This last factor notwithstanding, 95 per cent of the Mechanism's archives' holdings at the Arusha branch have thus far been relocated to the archives building. The Mechanism remains focused on the appropriate recovery of direct and indirect costs arising from delays, where economically feasible to do so, pursuant to paragraph 7 of General Assembly resolution 70/258.

19. The Mechanism remains deeply grateful to the United Republic of Tanzania for its generous and steadfast support throughout this construction project.

20. The Mechanism's sub-office in Kigali continued to provide protection and support services to witnesses, including liaison with relevant national and local governmental bodies on these issues. The Kigali sub-office also facilitated the activities of the monitors of the cases of the International Criminal Tribunal for Rwanda that have been referred to Rwanda, pursuant to article 6 of the statute of the Mechanism. The Kigali sub-office provided essential support to the Registry and the Prosecution during the recent transfer to Arusha of the five accused in the contempt proceedings in the *Turinabo et al.* case.

21. The branch of the Mechanism in The Hague and the International Tribunal for the Former Yugoslavia shared premises until the closure of the International Tribunal on 31 December 2017. In the light of the reduced occupancy requirements following the closure of the Tribunal, the Mechanism consolidated occupancy into part of the building, given the Mechanism's strong preference for remaining at its current premises for reasons of efficiency. The lease held by the Tribunal was transferred to the Mechanism and discussions are ongoing with the host State and the building's owners on the future lease.

22. The Mechanism is grateful for the long-standing commitment and support of the Netherlands for its work and activities.

D. Administration, staffing and budget

23. The basic requirements for a small, self-standing Mechanism administration were developed in cooperation between the Mechanism and the Tribunals and have been included in the Mechanism's budgets since 2014. The recruitment of the Mechanism's administrative staff in line with those requirements has occurred in phases as the Tribunals downsized and eventually closed. As at 1 January 2018, the Mechanism's administration was fully self-standing.

24. The Mechanism has in place focal points for gender issues; sexual exploitation and abuse; lesbian, gay, bisexual and transgender concerns; diversity and inclusion issues; and disability and accessibility issues in the workplace.

25. As at 1 November 2018, 167 of the 186 continuous posts approved to carry out the Mechanism's continuous functions were occupied. An additional 328 personnel are serving as general temporary assistance to assist with ad hoc needs, including judicial work and litigation issues. Those positions are short-term in nature and, consistent with the flexible staffing structure of the Mechanism, the number of such staff will fluctuate depending on the workload.

26. The Mechanism's continuous and general temporary assistance positions included nationals of 70 States, namely, Algeria, Australia, Austria, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, China, the Congo, Croatia, Cuba, Cyprus, Czechia, the Democratic Republic of the Congo, Denmark, Fiji, Finland, France, the Gambia, Germany, Ghana, Haiti, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Kenya, Latvia, Lebanon, Lesotho, Liberia, Madagascar, Mali, Mexico, Nepal, the Netherlands, New Zealand, the Niger, Nigeria, Pakistan, the Philippines, Poland, the Republic of Korea, Romania, the Russian Federation, Rwanda, Samoa, Senegal, Serbia, Sierra Leone, South Africa, Spain, the Sudan, Sweden, Thailand, the former Yugoslav Republic of Macedonia, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America, Zambia and Zimbabwe.

27. Fifty-six per cent of Professional staff are women, surpassing the gender parity goals set by the Secretary-General. Further details concerning the staffing by division of the Mechanism are reflected in enclosure 1.

28. By its resolution 72/258 A, the General Assembly approved a commitment authority in an amount not to exceed $87,796,600 gross for the maintenance of the Mechanism from 1 January to 31 December 2018. On 5 July 2018, by its resolution 72/258 B, the Assembly approved the Mechanism's revised and significantly reduced budget proposal for the 2018–2019 biennium in the amount of $196,024,100 gross.

29. In order to implement the decisions of the General Assembly, the Registry developed and is implementing an expenditure reduction plan to allow the Mechanism to fulfil the core elements of its mandate — mainly judicial activity — to the greatest extent possible while respecting the commitment authority and the approved budget. As a result of this plan, reductions are being made in both post and non-post resources. While reductions are being made at both branches, the majority of reductions are at the branch in The Hague.

30. The staffing reductions under the expenditure reduction plan carry significant operational risks, such as delayed mandate implementation, delayed or diminished service provision and the non-implementation of planned activities, as highlighted in the present report.

31. In order to manage the post reductions, the Registrar requested the Joint Negotiating Committee, which serves as an advisory body to the Registrar and comprises management and staff union representatives, to develop a proposal for a streamlined downsizing policy for exigent circumstances. The Registrar adopted the downsizing policy on 9 February 2018 and through its implementation, a considerable number of general temporary assistance positions have been abolished. Meanwhile, the Committee proposed a Mechanism downsizing policy to guide future post reductions. The latter is a broader policy and builds upon lessons learned during the downsizing at both Tribunals. The Registrar adopted the Mechanism downsizing policy on 26 June 2018, and the comparative review exercise was completed by 30 September. Following the implementation of the policy, further staffing reductions will take place between 1 December 2018 and 31 December 2019.

32. The expenditure reduction plan also provides for reductions of non-post resources to the greatest extent possible. For instance, general operating expenses have been significantly decreased through measures such as reducing access to the premises for staff at evenings and weekends, reconfiguring the housing of staff at the premises in The Hague to reduce the number of floors in use (thereby saving on the costs of utilities and services) and revising arrangements for the delivery of other services such as information technology, internal mail delivery and cleaning services. Similarly, enhancements to the premises of the Mechanism are now limited to those

strictly necessary to respond to security or health and safety concerns and to meet unforeseen operational demands. The Mechanism's vehicle holdings have been reviewed and reduced, and no provision was made in the revised budget proposal for the acquisition of any new vehicles.

33. Details and a breakdown of the Mechanism's costs, presented in terms of funds committed, are provided in enclosure 2.

E. Legal and regulatory framework

34. Having established a structure to govern its activities, the Mechanism continued to develop rules, procedures and policies that harmonized and built upon the best practices of both Tribunals, as well as its own practice, in order for the Mechanism to best achieve its mandate in a lean and efficient fashion.

35. During the reporting period, the President considered and provided feedback to the Registry on a variety of draft policies. Moreover, the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY and the Mechanism and the Practice Direction on Procedure for the Proposal, Consideration, and Publication of Amendments to the Rules of Procedure and Evidence of the Mechanism were revised by the President.

36. On 5 November 2018, the Mechanism reached an important milestone with the adoption by the President of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism. The Rules, which will enter into force on 5 December 2018, will be accompanied by further, more specific detention-related regulations to be issued on 5 December 2018. These Rules and regulations governing detention matters apply to both branches of the Mechanism and draw upon practices of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (General Assembly resolution 70/175, annex). Pending the entry into force of the Mechanism's Rules and regulations, the rules of detention and related instruments of the International Criminal Tribunal for Rwanda continue to apply, mutatis mutandis, to detainees at the Arusha branch, while the rules of detention and related instruments of the International Tribunal for the Former Yugoslavia continue to apply, mutatis mutandis, to those in detention at the branch in The Hague.

37. During the reporting period, the Registry reviewed draft policy instruments related to the support and protection of victims and witnesses. These policy instruments will include, as part of the Registry's witness management operations, gender-sensitive and gender-appropriate approaches. Gender considerations will also be reflected in lower-level instruments, which will be reviewed and amended, as required, over the course of the next few months. In addition, the Registry is drafting a code of conduct for the staff of the Witness Support and Protection Unit and is in the process of finalizing amendments to the Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism with a view to further clarifying the obligations of defence support staff.

38. The legal and regulatory instruments, policies, internal guidelines and operating procedures in effect at the Mechanism provide important clarity and transparency for stakeholders across a broad range of the Mechanism's mandated functions.

III. Judicial activities

39. During the reporting period, the Mechanism was seized of a number of complex matters. The President and the judges continued to engage in a wide variety of judicial activity, issuing 244 decisions and orders during the period. In accordance with article 8, paragraph 3, of the statute of the Mechanism, judicial activity was primarily carried out remotely. The President assigned matters to judges on the basis of an equitable distribution of workload. All of the judges on the roster were collectively supported by a lean Chambers team of 19 staff serving at both branches of the Mechanism.

40. Of the 244 decisions and orders issued during the reporting period, 147 (or approximately three in five) related not to the adjudication of the core crimes enumerated in the statute but rather to the adjudication of requests pertaining to other residual functions, including the protection of victims and witnesses, assistance to national jurisdictions, the enforcement of sentences and the investigation and trial of allegations of false testimony or contempt, as well as the management of the work of Chambers and the judicial review of administrative decisions. All such matters were adjudicated primarily by the President, by single judges working remotely or by the presiding judge in a pending case.

41. For instance, during the reporting period, the Mechanism was seized of five matters pertaining to allegations of false testimony or contempt. Notably, in one such contempt case, arrests were made and an initial appearance was held, marking the first court hearing at the Mechanism's Arusha branch, a significant milestone for the Mechanism. Specifically, on 24 August 2018, Judge Seon Ki Park confirmed an indictment against Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma and Dick Prudence Munyeshuli charging two counts of contempt and one charge of incitement to commit contempt of the International Criminal Tribunal for Rwanda and the Mechanism in relation to alleged interference with the *Ngirabatware* case, currently on review. The accused were arrested in Rwanda on 3 September 2018 and transferred to the seat of the Mechanism's Arusha branch on 11 September. The accused pleaded not guilty to all counts before Judge Vagn Prüsse Joensen at their initial appearance on 13 September. On 18 September, in accordance with article 1, paragraph 4, of the statute, Judge Joensen issued an order requesting submissions from Rwanda and the parties in relation to the suitability of the referral of this case to Rwanda for trial. Pretrial proceedings, including consideration of whether to refer the case to Rwanda, are ongoing. A status conference, as required under the Rules of Procedure and Evidence, has been scheduled to take place in Arusha on 13 December 2018.

42. The contempt case against Petar Jojić and Vjerica Radeta, which was transferred from the International Tribunal for the Former Yugoslavia to the Mechanism on 29 November 2017, was referred to the authorities of Serbia for trial by order of Judge Aydin Sefa Akay on 12 June 2018. The *amicus curiae* prosecutor in the case appealed against the order of referral and the appeal is currently pending before a bench of the Appeals Chamber.

43. Given that the Mechanism has a continuing obligation to safeguard the administration of justice, its duty to investigate and prosecute allegations of false testimony or contempt, subject to the provisions of article 1, paragraph 4, of the statute, will continue until its closure. Although it is not possible to fully foresee when and how often requests for access to confidential material or variation of protective measures will arise in the future, as recognized in the report of the Secretary-General preceding the establishment of the Mechanism (S/2009/258), it is anticipated that such requests will continue to be filed as long as cases continue to be investigated and prosecuted in national jurisdictions. In addition, accused or appellants will likely

continue to file such requests while their cases are pending and convicted persons may also do so until the conclusion of their sentences.

44. The Mechanism judges also continued their work on a trial and on appeals and requests for review related to the core crimes enumerated in the statute, as set forth below.

45. In the case of Jovica Stanišić and Franko Simatović, the trial commenced on 13 June 2017, and the presentation of the Prosecution's case is nearing completion. In line with the projections in previous reports, the Prosecution concluded the presentation of the majority of its witnesses shortly after the summer judicial recess. The final Prosecution witness, who was expected to testify on 6 September 2018, had to be rescheduled to accommodate the witness's medical condition and to allow for the completion of other domestic legal or administrative proceedings that are necessary to facilitate his testimony. The Prosecution witness is expected to be heard before the end of the year or in early 2019. Any deviation from the previous projection for the completion of the Prosecution's case in the summer of 2018 is not expected at this stage to have an impact on the overall projected length of the case. Following the conclusion of the Prosecution's case and the filing of the Defence's witness and exhibit list, it will be possible to make more detailed projections concerning the overall duration of the remaining trial proceedings. However, using the duration of the defence case during the original proceedings as a guide, it is likely that the trial proceedings in this case will conclude in the second half of 2020. At the current stage of the proceedings, the three judges on the bench are carrying out their work at the seat of the Mechanism's branch in The Hague branch.

46. The appeals by Radovan Karadžić and the Prosecution against the trial judgment issued on 24 March 2016 by a Trial Chamber of the International Tribunal for the Former Yugoslavia in the *Karadžić* case continued during the reporting period. The Trial Chamber had found Mr. Karadžić guilty of genocide, crimes against humanity and violations of the laws and customs of war and sentenced him to 40 years of imprisonment. In their notices of appeal, filed on 22 July 2016, Mr. Karadžić and the Prosecution presented a total of 54 grounds of appeal. Citing the unprecedented breadth and complexity of the case, the large amount of evidence on the record, the length of the trial judgment and the complexity of the issues raised on appeal, the parties requested the Appeals Chamber to grant extensions of time for the briefing process. The Appeals Chamber granted the requests in part and, after 217 days of extensions, the briefing process concluded on 6 April 2017 with the filing of the parties' reply briefs. An appeal hearing was held on 23 and 24 April 2018, and the case was aimed for completion in December 2018, significantly earlier than projected. However, following Mr. Karadžić's motion for the disqualification of Judge Theodor Meron from the bench, the President withdrew from the case on 27 September, explaining that to do so was in the interests of justice in order not to allow the disqualification proceedings to impede the progress of the appeals in the case. On the same day, Judge Ivo Nelson Caires Batista Rosa was assigned to fill the vacancy on the bench. Subsequently, on 1 November, the Appeals Chamber confirmed that, following the President's withdrawal, it was within his power to assign Judge Rosa to replace him. Considering the need for Judge Rosa to become fully familiar with the case and to take part in the deliberations, it is expected that the case will be completed by the end of the first quarter of 2019. Apart from the appeal hearing and in-person deliberations, all the judges on the bench in the case are carrying out their work remotely.

47. On 22 November 2017, a Trial Chamber of the International Tribunal for the Former Yugoslavia issued its judgment in the case of Ratko Mladić, finding him guilty of genocide, crimes against humanity and violations of the laws and customs of war and sentencing him to life imprisonment. Citing the extraordinary breadth and

complexity of the case, the length of the trial judgment, the lack of defence resources, and intended medical and legal filings, Mr. Mladić requested the Appeals Chamber to extend the deadlines for the briefing process. The Appeals Chamber granted the requests in part, allowing a total of 210 days of extensions. Both Mr. Mladić and the Prosecution filed their notices of appeal on 22 March 2018, their appeal briefs on 6 August and their responses on 14 November. Following the assignment of disqualification motions brought by Mr. Mladić to the most senior judge after the President, in accordance with the Rules of Procedure and Evidence, the senior judge disqualified Judges Theodor Meron, Carmel Agius and Liu Daqun from the case on 3 September owing to the appearance of bias. On 4 September, Judges Mparany Mamy Richard Rajohnson, Gberdao Gustave Kam and Elizabeth Ibanda-Nahamya were assigned to fill the vacancies on the bench. The bench elected Judge Nyambe as the presiding judge. On 14 September, at his request, Judge Rajohnson was replaced on the bench by Judge Aminatta Lois Runeni N'gum. As set forth below, accurate predictions as to completion can be made only at the conclusion of the briefing, which is expected on 29 November. At this stage, the pre-briefing estimate for completion of the case by the end of 2020 is maintained. Presently, all the judges on the bench in the case are carrying out their work remotely.

48. On 8 July 2016, Augustin Ngirabatware filed a request for review of his judgment. As described in previous reports, the proceedings in the case were delayed owing to the inability of Judge Aydin Sefa Akay to exercise his judicial functions until his provisional release from detention on 14 June 2017. Thereafter, the Appeals Chamber was able to consider the merits of Mr. Ngirabatware's request. On 19 June 2017, the Appeals Chamber granted the request for review and ordered the parties to file a list of proposed evidence and witnesses to be introduced at a review hearing. On 19 December 2017, the Appeals Chamber authorized the replacement of Mr. Ngirabatware's counsel in view of a conflict of interest. Following the replacement of counsel, the pre-review judge ordered Mr. Ngirabatware and the Prosecution to file, by the end of June 2018, a list of anticipated witnesses and evidence to be heard at a forthcoming review hearing. Following the receipt of that information, the hearing was scheduled to take place from 24 to 28 September 2018. On 14 September, the Appeals Chamber adjourned the hearing at the request of Mr. Ngirabatware to allow him time to consider the voluminous material related to the *Turinabo et al.* case that was disclosed to him following the arrest of the accused in that case on 3 September 2018. On 3 October, the pre-review judge sought the views of the parties as to when they would be prepared to go forward with the review hearing. Mr. Ngirabatware made submissions that he was not in a position to indicate when he would be prepared to proceed and sought to adjourn the hearing until the completion of the *Turinabo et al.* case. On 8 November 2018, the Appeals Chamber issued a ruling in which it indicated that it considered that it was inherent that an applicant be prepared to prove the existence of the new fact within a reasonable amount of time following a decision to grant review and therefore requested the parties to file submissions on whether there were grounds to reconsider the decision granting review. At the current stage of the proceedings, all the judges on the bench in the case are carrying out their work remotely, with the exception of the President, who is presiding as prescribed by the statute.

49. During the reporting period, the President of the Mechanism, pursuant to his authority in the area of enforcement of sentences, issued 29 orders and decisions in relation to requests for early release, as well as a number of other decisions. He is currently seized of a number of other confidential enforcement matters. In reaching decisions on certain enforcement matters, the President consults the judges of the sentencing Chamber who are judges of the Mechanism, as applicable, through remote procedure. If none of the judges who imposed the sentence are judges of the Mechanism, the President is to consult at least two other judges. In adjudicating

requests for early release, the President has remained mindful of the issues raised in paragraph 10 of Security Council resolution 2422 (2018) and taken steps to explore appropriate solutions consistent with the governing legal framework and applicable jurisprudence.

50. The President also issued a number of additional orders and decisions during the reporting period, including 10 orders and decisions related to requests for review of administrative decisions. Moreover, the President issued 24 assignment orders, of which 13 were assignments to single judges, 1 assignment was to a Trial Chamber and 10 assignments were to the Appeals Chamber.

51. All estimates in the present report relating to judicial activities are based on the presumption that no extraordinary events that may have an impact on their conduct will occur during the course of the proceedings, such as the replacement of counsel for reasons of health, newly arising conflicts or the illness of an accused. All projections remain subject to periodic updating on the basis of any new information. In that respect, the Mechanism recalls that in its evaluation report of 12 May 2016, OIOS indicated with respect to cases of the International Tribunal for the Former Yugoslavia that any changes based on the requirements of a just resolution of a case should not necessarily be construed as reflecting slippage in the conduct of a case and that accurate predictions as to completion could be made only at the close of a trial or at the conclusion of a briefing on appeal. With respect to projections for judicial activities other than trials and appeals from judgment, the Mechanism recalls the observations made in the report of the Secretary-General that "it is not possible to foresee when, and how often, requests related to contempt cases, protective orders, review of judgements, referral of cases and pardon and commutation of sentences will arise", but that "such issues are more likely to arise within a period of 10 to 15 years after the closure of the Tribunals and that the level of work involved will inevitably decrease over time" (see S/2009/258, para. 102).

52. Efforts continued to streamline internal working methods and processes within Chambers and, in collaboration with various other Sections of the Mechanism, to further facilitate the maintenance of an efficient and transparent "one office" work environment that drew on the resources available at both branches of the Mechanism to address judicial workload collectively wherever arising. Moreover, the judges, whose legal backgrounds are roughly evenly split between civil and common law, continued to draw on their expertise and knowledge in the adjudication of the various matters to which they were assigned.

53. Notwithstanding those strengths, both the Chambers Legal Support Section and the Office of the President were affected by the decision not to approve the Mechanism's budget as originally proposed for the biennium 2018–2019. In particular, the departure of several staff members from the already lean teams and the deferral of recruitment to fill vacancies increased the workload of existing staff and resulted in longer time frames for addressing less time-sensitive matters.

IV. Registry support to judicial activities

54. During the reporting period, the Registry continued to provide support to the Mechanism's judicial activities at both branches.

55. The Registry processed and disseminated more than 1,580 filings, including 106 Registry legal submissions, amounting to more than 16,600 pages. In addition, it facilitated and serviced the initial appearance of five accused in the *Turinabo et al.* case in Arusha. In The Hague, the Registry facilitated and serviced three status conferences in the *Karadžić* and *Mladić* appeal cases and hearings in the *Stanišić and*

Simatović case. With respect to the latter, the Registry facilitated court hearings in accordance with the Trial Chamber's court schedule, as well as the provision of testimony by three witnesses via video-link conferences.

56. The Registry's Language Support Services translated 9,000 pages of documents, provided 180 conference interpreter days and produced 3,500 pages of transcripts in English and French. This includes the Kinyarwanda Unit of the Language Support Services, which provides translations of, inter alia, monitoring reports with respect to cases referred to Rwanda.

57. Reductions undertaken pursuant to the expenditure reduction plan have left only a bare minimum of staff in the Registry to support courtroom functions in the ongoing cases. For instance, reductions in Security and Language Support Services staff affect the ability of the Mechanism to hold more than one proceeding a day or sit for extended hours, if needed, absent significant advance notice. In addition, and while the anticipated delays in court proceedings have not yet materialized, the fact that the Registry can provide only limited technical and administrative support has slowed down the pace of proceedings: the implementation of judicial decisions that require Registry support, such as redactions of transcripts and audiovisual recordings, have occasionally been significantly delayed. Similarly, the processing, translation and service of certain documents takes longer, thereby slowing down the progress of ongoing cases. Further, the reductions being implemented have also required the Mechanism to postpone or delay the certification of the judicial record in a number of completed cases.

58. Furthermore, given the implementation of the expenditure reduction plan, the increased strain on the limited resources of the Language Support Services will result in delays of necessary translations for court proceedings. Staff reductions in Language Support Services are expected to delay the completion of the Bosnian-Croatian-Serbian translation of the *Mladić* trial judgment by several months, which risks delaying the *Mladić* appeal proceedings. The Bosnian-Croatian-Serbian translations of the *Prlić et al.* appeal judgment and, when issued, the *Karadžić* appeal judgment can begin only thereafter. Nevertheless, during the reporting period, the Language Support Services were able to complete the translation of the *Šešelj* appeal judgment owing to a judicious use of resources.

59. The Registry's Office for Legal Aid and Defence administered the legal aid system of the Mechanism and provided various forms of assistance, financial and otherwise, to an average of 62 defence teams comprising a total of approximately 144 defence team members. In particular, the Office processed over 300 defence invoices, travel requests and expense reports during the reporting period. In addition, the Office increased the number of counsel admitted to the list of counsel eligible for assignment to suspects and accused before the Mechanism to 60.

V. Victims and witnesses

60. Pursuant to article 20 of the statute of the Mechanism and article 5 of the transitional arrangements (see Security Council resolution 1966 (2010), annex 2), the Mechanism is responsible for the protection of the witnesses who have testified in cases completed by the two Tribunals, as well as of those witnesses who have appeared or may appear before the Mechanism. In practice, this entails the protection and support of approximately 3,150 witnesses.

61. During the reporting period, consistent with judicial protection orders, and in close collaboration with domestic authorities and other United Nations entities, the Witness Support and Protection Unit provided security for witnesses by undertaking

threat assessments and coordinating responses to security-related requirements. The Unit also ensured that protected witness information remained confidential and continued to contact witnesses when orders to seek consent to the rescission, variation or augmentation of witness protective measures were received. Furthermore, the Unit facilitated contact between parties and relocated witnesses or witnesses of opposing parties when so required.

62. The witness protection teams at the two branches continued to exchange best practices and to use a common information technology platform for their respective witness databases. The platform maximizes operational efficiency across both branches.

63. During the reporting period, the Witness Support and Protection Unit implemented 15 judicial orders related to protected witnesses, including orders in relation to requests for the variation of protective measures. The Witness Support and Protection Unit at the branch in The Hague continued to receive new referrals for assessment and implementation of protective measures.

64. As part of the provision of support services to witnesses by the Mechanism at the Arusha branch, witnesses residing in Rwanda continued to receive medical and psychosocial services. These services are particularly focused on the witnesses experiencing psychological trauma or living with HIV/AIDS, as many of those who contracted the virus did so as a result of crimes committed against them during the genocide. In addition, the Witness Support and Protection Unit continued to support 85 protected witnesses who testified before the International Criminal Tribunal for Rwanda in resolving refugee status and residency-related issues.

65. The Witness Support and Protection Unit at the branch in The Hague continued to support witness activity in the *Stanišić and Simatović* case, facilitating the testimony of 11 witnesses. Similarly, the Witness Support and Protection Unit at the Arusha branch together with its counterpart in The Hague undertook administrative and logistical arrangements for witness activity related to the anticipated hearing in the *Ngirabatware* case.

66. During the reporting period, the Mechanism released anonymized data obtained during a pilot study by the Victims and Witnesses Section of the International Tribunal for the Former Yugoslavia and the Castleberry Peace Institute of the University of North Texas entitled "Echoes of Testimonies", in which the long-term impact on witnesses of testifying before the Tribunal was examined. These data include, inter alia, information on the demographics of witnesses and their reasons for testifying before the Tribunal, the socioeconomic impact of testifying and the witnesses' security concerns, physical and psychological well-being and perceptions about justice and the Tribunal. By making this information available on the Mechanism's website, the Witness Support and Protection Unit aims to increase recognition of the importance of supporting witnesses who testify before international criminal tribunals and encourage further research and development in this field.

67. It is expected that victim and witness protection will continue to be required in the coming years in the light of the numerous judicial protection orders covering 3,150 victims and witnesses that will remain in force unless rescinded or waived. It is difficult to assess precisely how long the victim and witness protection function will need to remain operational. The provision of support may be required until the last victim or witness is deceased or, where applicable, until the cessation of protective measures covering a victim's or witness's immediate family members. In relation to relocated witnesses, support may be required until the last member of the immediate family is deceased.

VI. Fugitives and trial and appeal readiness

68. The responsibility for tracking the remaining fugitives indicted by the International Criminal Tribunal for Rwanda was transferred to the Mechanism on 1 July 2012, in accordance with article 6 of the transitional arrangements (see Security Council resolution 1966 (2010), annex 2). In that resolution, the Council urged all States, particularly those where fugitives were suspected to be at large, to further intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible. The Council repeated that call to States in subsequent resolutions, including, most recently, in resolution 2422 (2018). The Mechanism is deeply grateful for the Council's continued support in relation to this vital matter.

69. Eight accused indicted by the International Criminal Tribunal for Rwanda remained fugitives. Of the eight fugitives, the Mechanism retained jurisdiction over three: Félicien Kabuga, Augustin Bizimana and Protais Mpiranya. The cases of the other five fugitives had been referred to Rwanda by the Tribunal. The arrest and prosecution of all eight individuals remained a top priority for the Mechanism. The fugitive tracking function is within the responsibility of the Prosecutor and is discussed in his report (see annex II).

70. Consistent with its commitment to efficiency, the Mechanism continued to ensure that it was prepared to conduct a trial or appeal in the event of a fugitive being apprehended or of any ongoing proceedings resulting in an appeal or retrial. Pursuant to article 15, paragraph 4, of the statute, rosters of qualified potential staff have been established to enable the expeditious recruitment of the additional staff required to support those judicial functions.

71. The preparedness of the Mechanism to conduct proceedings was demonstrated in the contempt proceedings in the *Turinabo et al.* case by the swift transfer of five accused from Kigali to the Arusha branch and their initial appearance two days later.

72. Trial readiness will continue to be required as long as the cases of the remaining accused still at large are pending before the Mechanism. Further, there is a possibility that a retrial may be ordered in any ongoing appeal proceedings, that contempt or false testimony proceedings may be initiated or that the referral of a case to a national jurisdiction for trial may be revoked.

VII. Detention facilities

73. At the United Nations Detention Facility in Arusha and the United Nations Detention Unit in The Hague, the Mechanism detains persons awaiting trial, appeal or other judicial proceedings before the Mechanism, as well as persons otherwise detained on the authority of the Mechanism, such as convicted persons awaiting transfer to an enforcement State.

74. It is expected that the services of the United Nations Detention Facility in Arusha will continue to be required until the convicted person currently awaiting transfer to an enforcement State is transferred or, alternatively, released, and until the referral or completion of the contempt proceedings in the *Turinabo et al.* case. Once the remaining detained persons are either transferred or released, the United Nations Detention Facility will retain an area commensurate to the detention of the remaining three fugitives expected to be tried by the Mechanism after they are apprehended and will provide a residual custodial capacity for other individuals who may appear before the Mechanism.

75. In The Hague, the United Nations Detention Unit reduced its custodial capacity from 20 to 12 cells during the reporting period commensurate with the reduced number of detainees. The services of the Unit will continue to be required until all trials and appeals in ongoing cases are concluded and all detained persons are released or transferred to enforcement States, after which a reduced, residual custodial capacity for other individuals who may appear before the Mechanism may have to be arranged.

76. As described in more detail in section II.E above, the Mechanism's regulatory framework for governing detention matters at both branches is expected to go into effect on 5 December 2018.

VIII. Cases referred to national jurisdictions

77. Pursuant to article 6, paragraph 5, of its statute, the Mechanism is responsible for monitoring cases referred to national courts by the two Tribunals, with the assistance of international and regional organizations and bodies.

78. The cases of three individuals indicted by the International Criminal Tribunal for Rwanda and subsequently apprehended, Jean Uwinkindi, Bernard Munyagishari and Ladislas Ntaganzwa, were previously referred to Rwanda for trial. The *Uwinkindi* case was on appeal, as was the *Munyagishari* case. Trial proceedings were ongoing in the *Ntaganzwa* case. Two additional individuals indicted by the Tribunal, namely, Laurent Bucyibaruta and Wenceslas Munyeshyaka, had their cases referred to France for trial. In the *Bucyibaruta* case, the Public Prosecutor filed his final submission asking for partial discharge and transfer of that case to the Criminal Court of Paris. In that same submission, the Public Prosecutor further requested that the Investigating Judge issue an order for an indictment against Mr. Bucyibaruta. In the *Munyeshyaka* case, on 21 June 2018, the Investigative Chamber of the Paris Court of Appeals upheld the decision to dismiss the proceedings on the basis of insufficient evidence to prosecute Mr. Munyeshyaka. Several appeals have been filed against that decision.

79. The Mechanism continued to monitor the cases referred to Rwanda with the pro bono assistance of six monitors from the Kenyan section of the International Commission of Jurists, pursuant to a memorandum of understanding concluded on 15 January 2015 and subsequently amended on 16 August 2016 to formally encompass the *Ntaganzwa* case. An interim monitor continued to monitor the two cases referred to France.

80. The Mechanism continued to follow the status of the case of Vladimir Kovačević, which was referred to Serbia by the International Tribunal for the Former Yugoslavia in March 2007.

81. The Mechanism's activities in relation to cases referred to national jurisdictions are expected to continue for the duration of those cases. While each case is different, the experience with referred cases to date is instructive as to potential timelines. The *Ntaganzwa* case is currently at trial, more than two years after the accused was transferred to Rwanda. Mr. Uwinkindi was transferred to Rwanda for trial in 2012 and Mr. Munyagishari was transferred to Rwanda for trial in 2013. Both of their cases are currently at the appeal stage. If any of the five remaining fugitives whose cases have been referred to Rwanda for trial are arrested, the estimate for the continuation of the Mechanism's monitoring function with respect to Rwanda will need to be assessed at that time. The two cases referred to France have been at the investigative/pretrial phase for more than 10 years and, as set forth above, remain ongoing. Further estimates for the continuation of the Mechanism's monitoring

function with respect to France will depend on decisions of the French judicial authorities in those cases.

IX. Enforcement of sentences

82. In accordance with article 25 of the statute of the Mechanism, the Mechanism has jurisdiction to supervise the enforcement of sentences. In accordance with article 26 of the statute, the President has the authority to decide on requests for pardon or commutation of sentence.

83. The Mechanism relies on the cooperation of States for the enforcement of sentences. Sentences are served within the territory of States Members of the United Nations that have concluded agreements for the enforcement of sentences or indicated their willingness to accept convicted persons under any other arrangement. The agreements concluded by the United Nations for the two Tribunals continue to apply to the Mechanism, mutatis mutandis, unless superseded by subsequent agreements. The Mechanism continued its efforts to increase its enforcement capacity for both branches and it welcomes the cooperation of States in that regard.

84. In July 2018, the Mechanism transferred one convicted person from the United Nations Detention Facility in Arusha to Senegal to serve her sentence. Of the 31 persons convicted by the International Criminal Tribunal for Rwanda who are currently serving their sentences, 12 are in Mali, 14 are in Benin and 5 are in Senegal. One convicted person remains at the United Nations Detention Facility in Arusha, pending transfer to an enforcement State.

85. In June 2018, one convicted person was transferred from the United Nations Detention Unit in The Hague to Austria to serve his sentence. Following the transfer, 17 persons convicted by the International Tribunal for the Former Yugoslavia are currently serving their sentences under the supervision of the Mechanism. Those individuals are serving their sentences in 10 States: Austria (1), Denmark (1), Estonia (3), Finland (2), France (1), Germany (4), Italy (1), Norway (1), Poland (2) and Sweden (1). Five convicted persons remain at the United Nations Detention Unit in The Hague, awaiting transfer to enforcement States. The Mechanism aimed to complete the transfer of all convicted persons at both branches by the end of 2018. However, in view of the Mechanism's reliance on the cooperation of States in that regard and certain ongoing legal proceedings, the completion of the transfers may take longer than envisaged.

86. The Mechanism is deeply grateful to the above-mentioned States for their ongoing engagement in the enforcement of sentences.

87. The Mechanism, in coordination with national authorities and the United Nations Development Programme, continued efforts to address the recommendations of the relevant inspecting bodies charged with examining the conditions of detention in enforcement States, as well as the recommendations of an independent prison management expert engaged by the Mechanism.

88. The Mechanism also engaged an expert on ageing in prison and associated vulnerabilities. In March 2018, the expert inspected the prison conditions of the persons serving their sentences in Mali and Benin under the supervision of the Mechanism and has issued recommendations to the Mechanism. The recommendations are currently under consideration by the Mechanism.

89. During the reporting period, the Mechanism continued to monitor closely the particular security situation in Mali and received advice and reports from the

Department of Safety and Security of the Secretariat and the designated security official in Mali.

90. The functions related to the supervision of the enforcement of sentences carried out under the authority of the President will continue until the last prison sentence has been served, subject to the application of rule 128 of the Rules of Procedure and Evidence of the Mechanism, which allows for the possibility of designating another body to supervise the enforcement of sentences after the Mechanism ceases to exist, in the event that any convicted person remains imprisoned in an enforcement State at that time.

91. As set forth in the report of the Secretary-General mentioned above, it is not possible to foresee when or how often requests for pardon and commutation of sentence may arise. Nevertheless, it was stated in that report that, in general terms, such issues were more likely to arise within a period of 10 to 15 years after the closure of the Tribunals and that the level of work involved would inevitably decrease over time. It was also stated that the two Tribunals estimated that applications for pardon, commutation of sentence or early release could be expected until at least 2027 for cases of the International Tribunal for the Former Yugoslavia and until around 2030 for cases of the International Criminal Tribunal for Rwanda. The estimate, which was made in 2009, requires a slight adjustment, given the fact that several individuals currently serving life sentences will not be eligible for consideration of pardon, commutation of sentence or early release until at least 2035, even though they may seek such relief before that time.

X. Relocation of acquitted and released persons

92. The Mechanism continued to deploy focused efforts to facilitate sustainable solutions for the resettlement of the acquitted and released persons and to provide those still residing in Arusha with relevant assistance, in line with the Strategic Plan for the Relocation of Acquitted and Released Persons. The number of acquitted and released persons in Arusha is currently nine, following the death of one released person and the successful relocation of an acquitted person during the reporting period.

93. Through its consistent approach of seeking consensual relocation outcomes, the Mechanism continued to engage bilaterally with States that had, in principle, indicated willingness to accept one or more of those persons. The Mechanism also supported the private relocation efforts of acquitted and released persons by engaging with relevant government officials. Furthermore, the Registrar continued to pursue high-level exploratory contacts with other relevant States in that regard.

94. The Mechanism remains dependent upon the goodwill of States in accepting acquitted and released persons for relocation in their countries. In view of the experience to date and the numbers of individuals concerned, it remains unlikely that the Mechanism's efforts will lead to a relocation of all individuals concerned within the foreseeable future; nevertheless, the Mechanism will continue to seek to achieve appropriate bilateral outcomes with relevant States. The Mechanism remains grateful to the Security Council and individual States for their ongoing support for relocation efforts in order to resolve this long-standing challenge, which will persist until such time as all acquitted and released individuals are appropriately relocated or are deceased.

XI. Archives and records

95. In accordance with article 27 of its statute, the Mechanism has responsibility for the management, including preservation and access, of the archives of the Mechanism and the two Tribunals, which are co-located with the respective branches of the Mechanism. The management of the archives includes responsibility for the preservation, arrangement and description of records, their security and the provision of access thereto.

96. The archives include records concerning: investigations, indictments and court proceedings; the protection of witnesses; the detention of accused persons; and the enforcement of sentences. The archives also include documents from States, other law enforcement authorities, international and non-governmental organizations and other stakeholders. The records exist in both digital and physical formats and consist of documents, maps, photographs, audiovisual recordings and objects. The Mechanism Archives and Records Section has been tasked with preserving the records and facilitating the widest possible access to them, while ensuring the continued protection of confidential information, including that concerning protected witnesses.

97. The Mechanism Archives and Records Section is currently responsible for the management of more than 2,000 linear metres of physical records and 1.2 petabytes of digital records of both the International Criminal Tribunal for Rwanda and the Mechanism's Arusha branch and more than 2,400 linear metres of physical records and approximately 1.5 petabytes of digital records from the International Tribunal for the Former Yugoslavia and the Mechanism's branch in The Hague.

98. The Mechanism Archives and Records Section is also responsible for the periodic disposition of the records that have temporary value, in accordance with established retention policies. During the reporting period, this entailed the authorized destruction of 54 linear meters of records at the Arusha branch. This work will continue in the coming years. The authorized destruction of records at the branch in The Hague is expected to commence in 2019. The Mechanism will remain responsible for the management of records of the International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia that have been designated for permanent retention, as well as the records of archival value generated by the Mechanism.

99. Most of the digital records of both Tribunals will be incorporated into the Mechanism's digital preservation system to safeguard their long-term integrity, reliability and usability. During the reporting period, the ingestion of digital records commenced at the Arusha branch and continued at the branch in The Hague. A total of 11,708.75 gigabytes of digital records were ingested, including more than 55,600 files in a variety of formats. The work will continue at both branches in the coming years.

100. The updating of the public interfaces to access and search judicial records of the Tribunals and the Mechanism continued throughout the reporting period. More than 350,000 judicial records, including approximately 15,000 hours of audiovisual recordings, are currently available to the public through the interfaces. During the reporting period, the records were accessed by more than 11,270 users from around the world.

101. During the reporting period, the Mechanism received and responded to more than 90 requests for access to records under its policy on access. Many of those requests were for copies of audiovisual recordings of courtroom proceedings.

102. The Mechanism Archives and Records Section continued its efforts to enhance efficiency and effectiveness and to improve working practices through the development and implementation of a comprehensive governance framework for the management of archives and records. Those efforts included the development of key archives and record-keeping strategies to ensure compliance with best practices, as well as policy instruments for their transparent and consistent implementation, such as a preservation strategy for the archives managed by the Mechanism and a manual for creating authority records. The Mechanism's creation of authority records, in accordance with internationally recognized standards, is aimed at ensuring consistency in cataloguing the archives of the Tribunals and the Mechanism. The publicly accessible catalogue of the archives that will ultimately result will facilitate access to the archives and related research and thereby contribute to safeguarding the legacy of the Tribunals and the Mechanism.

103. The production of the publicly accessible catalogue of the archives forms part of the activities of the Mechanism Archives and Records Section that were delayed as a result of the expenditure reduction plan. Further, work to preserve audiovisual recordings currently stored on obsolete physical media had to be delayed, not only affecting access to those records but putting them at risk of permanent loss. More generally, owing to the reductions currently being undertaken, it has not been possible to provide timely access to records in all instances.

XII. Cooperation of States

104. Pursuant to article 28 of the statute of the Mechanism, States are required to cooperate with the Mechanism in the investigation and prosecution of persons covered under the statute and to comply with orders and requests for assistance in relation to cases before the Mechanism. States are also required to respect the statute of the Mechanism owing to its adoption by the Security Council pursuant to Chapter VII of the Charter of the United Nations. The Mechanism is dependent upon the cooperation of States.

105. The arrest and surrender of the remaining fugitives are a priority of the Mechanism. As described above, the Mechanism requires the full cooperation of States in relation to the ongoing fugitive-tracking operations conducted by the Prosecutor, and it continues the practice of the International Criminal Tribunal for Rwanda by calling for the assistance of relevant States in that respect. As also described above, the Mechanism relies on the cooperation of States for the enforcement of sentences and the resettlement of the acquitted and released persons currently living in Arusha.

106. During the reporting period, the Mechanism continued to promote communication and cooperation with the Governments of Rwanda and of the States of the former Yugoslavia. The Mechanism will continue to discuss matters of mutual interest with the Rwandan authorities, including means by which the cooperation with the Government of Rwanda can be enhanced, in line with paragraph 23 of Security Council resolution 2256 (2015). In that regard, the Mechanism's Kinyarwanda Unit, established at the beginning of 2016, continued to translate trial judgments of the International Criminal Tribunal for Rwanda into Kinyarwanda. During the reporting period, the Kinyarwanda Unit completed the translation of two further judgements, a number of decisions, and monitoring reports concerning the three cases referred to Rwanda.

107. Representatives of the Mechanism, up to and including the level of the principals, also met with victims' groups and engaged with government officials from Rwanda and the States of the former Yugoslavia during the reporting period.

108. After the closure of the International Tribunal for the Former Yugoslavia, the Mechanism assumed the remaining responsibilities of that Tribunal with regard to facilitating the establishment of information and documentation centres in the region of the former Yugoslavia, in accordance with paragraph 15 of Security Council resolution 1966 (2010). Significantly, the first such information centre was opened on 23 May 2018 in Sarajevo, with the support of the Mechanism. In June 2018, the Mechanism held a two-day training session for representatives of the centre on accessing key information and legal databases available on the legacy website of the International Tribunal for the Former Yugoslavia and the website of the Mechanism. The Mechanism is available, within its budgetary constraints, to provide further support to the centre and to other stakeholders in the former Yugoslavia who seek to establish similar information centres in the region. Representatives of the Mechanism engaged in dialogue with relevant authorities in that regard during the reporting period.

XIII. Assistance to national jurisdictions

109. In accordance with article 28 of the statute of the Mechanism, the Mechanism shall respond to requests for assistance from national authorities in relation to the investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of the former Yugoslavia and Rwanda.

110. The Mechanism routinely receives requests from national authorities or parties to national proceedings for assistance in relation to domestic proceedings concerning individuals allegedly implicated in the genocide in Rwanda or the conflicts in the former Yugoslavia. During the reporting period, the Mechanism also received and considered requests to vary the protective measures for witnesses and disclose their testimony and evidence (see sect. III above). Comprehensive information and guidance for those who wish to request assistance are available on the Mechanism's website.

111. The data concerning requests for assistance submitted to both branches of the Mechanism continued to be centralized into one repository. The branches also continued to exchange best practices for the development of policies and training programmes with a view to maximizing operational efficiency and ensuring that the Mechanism provides effective assistance to national jurisdictions.

112. During the reporting period, the Registry processed more than 56 requests for assistance from national jurisdictions and provided over 28,235 documents. Nevertheless, as a result of the expenditure reduction plan, delays in providing access to records in response to requests from national jurisdictions occurred.

113. It is expected that activities linked to requests for assistance from national jurisdictions will continue concomitant to the investigation and prosecution of cases related to the genocide in Rwanda and the conflicts in the former Yugoslavia in domestic jurisdictions. The high number of requests for assistance is expected to continue over the coming years.

XIV. External relations

114. The core tasks of the External Relations Office, which has staff at both branches of the Mechanism, include developing and maintaining relations with relevant external stakeholders and informing the public about the Mechanism's work, including through the Mechanism's website and social media channels and by

responding to media inquiries, organizing public events and producing informational materials.

115. During the reporting period, the External Relations Office at the Arusha branch facilitated the attendance of the media and the general public at the initial appearance proceedings in the *Turinabo et al.* contempt case. The video of the initial appearance in the case has been viewed nearly 1,600 times.

116. At the branch in The Hague branch, the External Relations Office continued to facilitate the attendance of the media and the general public at a number of public judicial hearings during the reporting period, including at the ongoing retrial in the *Stanišić and Simatović* case and status conferences in the *Karadžić* and *Mladić* cases. The hearings in those cases were attended by more than 600 visitors, and the online streaming of the respective court sessions received more than 6,000 views.

117. On 23 September 2018, the External Relations Office coordinated the Mechanism's participation in The Hague International Open Day at its Hague premises. More than 400 members of the public benefited from presentations by judges, the Registrar and senior staff, attended screenings of documentaries and participated in courtroom tours and various other activities.

118. Furthermore, in Arusha, the External Relations Office organized the International Organizations Open Day at the Mechanism's premises, which was held on 3 November 2018, in partnership with other Arusha-based international and regional institutions. More than 1,300 visitors attended and were given an opportunity to tour the courthouse complex, view the Mechanism's archives facility and attend presentations in the courtroom.

119. In addition to visitors attending special events or court proceedings, the Mechanism also continued to welcome other visitors to its premises and to provide library services at both branches. The Arusha branch welcomed 571 visitors during the reporting period, including members of the diplomatic corps, researchers and members of the public from the Great Lakes region and beyond. The Arusha library processed a total of 2,186 enquiries, including research requests and loans. In The Hague, the External Relations Office welcomed groups comprising 2,000 visitors during the reporting period, and the library of the branch in The Hague processed 600 research requests and loans. The latest edition of the Mechanism's bibliography of publications relating to the work of the Mechanism and the Tribunals was issued in October 2018. It will continue to add value to the legacy of the Tribunals by assisting both Mechanism staff and external researchers in identifying relevant resources and research materials related to the work of the Tribunals and the Mechanism.

120. During the reporting period, services provided by the External Relations Office to the public had to be scaled down as a result of the expenditure reduction plan and the reduced staffing levels. While the Office continued to respond to queries from the media and researchers and facilitated the issuance of statements and public information, the overall scope of work had to be significantly reduced. For example, limited new content could be added to the website of the Mechanism, which contributed to a 3 per cent decrease in visitors compared with the previous reporting period.

XV. Reports of the Office of Internal Oversight Services

121. During the reporting period, the Mechanism continued to benefit from regular audits by OIOS and the implementation of its recommendations. Two audit reports relating to the management of the resources of the tracking team of the Office of the

Prosecutor[2] and the liquidation activities of the International Tribunal for the Former Yugoslavia were issued by OIOS. An additional two audits relating to the management of legal aid and defence matters, and the universal judicial database project, respectively, are currently ongoing.

122. The report on the audit of liquidation activities at the International Tribunal for the Former Yugoslavia was issued on 31 May 2018. In the report (2018/052), OIOS stated that overall, liquidation activities had been performed satisfactorily; the liquidation plan had been developed and implemented satisfactorily; key liquidation tasks had been completed according to plan; and the assets of the International Tribunal for the Former Yugoslavia had been disposed of in line with the disposal plan. Accordingly, OIOS did not issue any recommendations.

123. The Mechanism continued to diligently follow up on and implement recommendations made in earlier OIOS audits. During the reporting period, the Mechanism implemented and requested closure of seven recommendations. Actions undertaken included: implementing procedures to ensure compliance with the advance purchase requirements for entitlement travel; obtaining documentary proof for payment of flat sums for boarding expenses for staff exercising their education grant entitlement; and finalizing a senior manager's compact between the Secretary-General and the Registrar. Six recommendations related to the new Arusha facility remain open.

124. During the previous reporting period, OIOS completed an evaluation of the methods and work of the Mechanism. In the evaluation report issued in March 2018 (S/2018/206), OIOS assessed the relevance, efficiency and effectiveness of the methods and work of the Mechanism in implementing its mandate during the period 2016–2017, with a focus on its consolidation, coordination and organizational arrangements in becoming a self-standing institution across two branches. OIOS observed that the Mechanism had made significant progress towards establishing itself as a small, temporary and efficient structure, whose functions and size would diminish over time, with the capacity to respond to varying workloads and balance immediate demands against longer-term priorities and that the Mechanism had achieved much of what the Security Council envisaged in resolution 1966 (2010). OIOS nonetheless made six important recommendations: "(a) the Mechanism should develop scenario-based plans to enhance responsiveness to changing workloads; (b) the Office of the Prosecutor should strengthen staff morale to improve management of downsizing and upsizing; (c) the Registry should enhance efforts to harmonize and unify offices as one institution; (d) the Registry should support institution-building projects with leadership, engagement and third-party expertise; (e) the Mechanism should monitor gender balance and parity; the Witness Support and Protection Unit should incorporate gender sensitivity into its policy; and (f) the Mechanism should strengthen its approach to the supervision and provision of medical care for prisoners serving sentences."

125. During the reporting period, the Mechanism continued its efforts to implement the six recommendations. With respect to recommendation (a), the Registry is actively developing a scenario-based analysis to respond to changes in the Mechanism's workload, thereby mitigating operational risk. As to recommendation (c), key policies are being jointly developed and harmonized across the branches. Regarding recommendation (d), an independent two-week audit of the universal judicial database project by the OIOS Internal Audit Division commenced on 1 October 2018. In response to recommendation (e), the Registry is advancing gender parity and gender-sensitive approaches across both branches of the Mechanism, including: (i) through the use of a human resources "dashboard" that allows for

[2] This audit report has been classified by OIOS as strictly confidential.

ongoing monitoring and analysis of gender balance within the Mechanism; and (ii) by conducting a thorough review and update of witness support and protection policies (see sect. II.E above).

XVI. Conclusion

126. From its inception, and throughout Judge Theodor Meron's tenure as President, the Mechanism has strived to ensure that it operates in the most efficient and effective manner possible as it seeks to complete the mandate entrusted to it, notwithstanding the various challenges it has faced, including, most recently, in relation to its budgetary situation.

127. The Mechanism's success in that regard would not have been possible without the cooperation and commitment of Member States and other key stakeholders. The Mechanism is deeply grateful for the sustained support it receives from its host States, the United Republic of Tanzania and the Netherlands, as well as from Rwanda, the States of the former Yugoslavia and individual States Members of the United Nations in respect of specific issues. The Mechanism further wishes to express its sincere appreciation for the continued and steadfast support it has received from the members of the Security Council. The Mechanism also acknowledges with gratitude the significant assistance it continues to receive from the Office of Legal Affairs and the Department of Management of the Secretariat. All of these contributions, together with the dedication of the Mechanism's judges and staff, have been crucial in enabling the Mechanism to make vital progress in completing its judicial and other work while maintaining the highest of standards and serving as a model for international judicial institutions.

Enclosure 1

International Residual Mechanism for Criminal Tribunals: staffing*

Table 1
Number of staff by branch and organ

Category	*Arusha branch*	*The Hague branch*	*Chambers*[a]	*Office of the Prosecutor*	*Registry*[b]	*Mechanism overall*
All staff	165	330	32	90	373	495
Staff on continuous posts	111	56	8	25	134	167
Staff on general temporary assistance positions	54	274	24	65	239	328
International staff (Field Service, Professional and above)	88	143	24	60	147	231
Local staff (General Service)	77	187	8	30	226	264

[a] Chambers staffing data include the Office of the President and exclude judges.
[b] Registry staffing data include: Immediate Office of the Registrar; Archives and Records Section; Witness Support and Protection; Conference Support Services; Language Support Services; Public Relations; Office for Legal Aid and Defence; Administration; and Security, including at the United Nations Detention Facility and the United Nations Detention Unit.

Table 2
Geographical representation, by regional group

	Arusha branch	*The Hague branch*	*Mechanism overall (percentage)*[a]
Nationalities	**37**	**58**	**70**
All staff			
Africa	125	20	145 (29)
Asia-Pacific	7	24	31 (6)
Eastern Europe	3	77	80 (16)
Latin America and the Caribbean	3	7	10 (2)
Western Europe and other States	27	202	229 (46)
International staff (Field Service, Professional and above)			
Africa	48	7	55 (24)
Asia-Pacific	7	7	14 (6)
Eastern Europe	3	34	37 (16)
Latin America and the Caribbean	3	3	6 (3)
Western Europe and others	27	92	119 (51)
Local (General Service)			
Africa	77	13	90 (34)
Asia-Pacific	–	17	17 (6)
Eastern Europe	–	43	43 (16
Latin America and the Caribbean	–	4	4 (2)
Western Europe and others	–	110	110 (42)

(Footnotes on following page)

* The data in the present enclosure represent the number of staff employed as at 1 November 2018.

(Footnotes to Table 2)

[a] As percentages are rounded to the nearest percentage point, the total may not add up exactly to 100 per cent.

African Group: Algeria, Burkina Faso, Burundi, Cameroon, Congo, Democratic Republic of the Congo, Gambia, Ghana, Kenya, Lesotho, Liberia, Madagascar, Mali, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

Asia-Pacific Group: China, Cyprus, Fiji, India, Indonesia, Iraq, Lebanon, Nepal, Pakistan, Philippines, Republic of Korea, Samoa and Thailand.

Eastern European Group: Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Latvia, Poland, Romania, Russian Federation, Serbia, the former Yugoslav Republic of Macedonia and Ukraine.

Latin American and Caribbean Group: Bolivia (Plurinational State of), Brazil, Cuba, Haiti, Jamaica and Mexico.

Western European and Other States Group: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, New Zealand, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America.

Table 3
Gender representation

	Arusha branch	*The Hague branch*	*Mechanism overall (percentage)*
Professional staff (all levels)	46	143	189
Male	30	54	84 (44)
Female	16	89	105 (56)
Professional staff (P-4 and above)	19	54	73
Male	14	22	36 (49)
Female	5	32	37 (51)

Table 4
Staff by organ

	Arusha branch	*The Hague branch*	*Mechanism overall*
Chambers (including the Office of the President)	5	27	32
Office of the Prosecutor	20	70	90
Registry	140	233	373
Immediate Office of the Registrar	10	11	21
Archives and Records Section	18	11	29
Witness Support and Protection	10	16	26
Conference Support Services	–	11	11
Language Support Services	8	41	49
Public Relations	2	8	10
Office of Legal Aid and Defence	–	4	4
Administration	34	78	112
Security (including United Nations Detention Facility and United Nations Detention Unit)	58	53	111

Enclosure 2

International Residual Mechanism for Criminal Tribunals: information relating to costs

Table 1
Appropriations for the biennium 2018–2019 (net of staff assessment)
(United States dollars)

	Chambers	*Office of the Prosecutor*	*Registry*	*Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance for former staff of both Tribunals*	*Mechanism*
Arusha					
Post	–	5 536 900	19 769 200	–	25 306 100
Non-post[a]	789 700	4 877 400	22 901 500	5 031 850	33 600 450
Subtotal	**789 700**	**10 414 300**	**42 670 700**	**5 031 850**	**58 906 550**
The Hague					
Post	–	2 761 700	10 963 000	–	13 724 700
Non-post	4 267 000	13 432 200	78 896 500	5 031 850	101 627 550
Subtotal	**4 267 000**	**16 193 900**	**89 859 500**	**5 031 850**	**115 352 250**
New York[b]					
Post	–	–	304 900	–	304 900
Non-post	–	–	–	–	–
Subtotal	**–**	**–**	**304 900**	**–**	**304 900**
Office of Internal Oversight Services[c]					
Post	–	–	158 800	–	158 800
Non-post	–	–	325 100	–	325 100
Subtotal	**–**	**–**	**483 900**	**–**	**483 900**
Overall					
Post	–	8 298 600	31 195 900	–	39 494 500
Non-post	5 056 700	18 309 600	102 123 100	10 063 700	135 553 100
Total	**5 056 700**	**26 608 200**	**133 319 000**	**10 063 700**	**175 047 600**

[a] Non-post includes all commitment items other than posts, such as general temporary assistance, travel and rental of premises.
[b] Included in the allotment for the branch in The Hague in the biennium 2016–2017.
[c] Included in the budget for the International Tribunal for the Former Yugoslavia in the biennium 2016–2017.

Table 2
Expenditures (net of staff assessment) as at 1 November 2018 (per Umoja)
(United States dollars)

	Chambers	*Office of the Prosecutor*	*Registry*	*Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance for former staff of both Tribunals*	*Mechanism*
Arusha					
Post		2 204 602	7 280 531		9 485 132
Non-post	168 136	1 031 380	8 135 209	1 786 682	11 121 406
Subtotal	**168 136**	**3 235 981**	**15 415 739**	**1 786 682**	**20 606 539**
The Hague					
Post	–	1 074 737	4 440 809		5 515 546
Non-post	1 660 083	5 748 272	30 784 755	2 114 855	40 307 965
Subtotal	**1 660 083**	**6 823 009**	**35 225 564**	**2 114 855**	**45 823 511**
New York					
Post	–	–	145 727	–	145 727
Non-post	–	–	–	–	–
Subtotal	**–**	**–**	**145 727**	**–**	**145 727**
Office of Internal Oversight Services					
Post	–	–	50 513	–	50 513
Non-post	–	–	119 280	–	119 280
Subtotal	**–**	**–**	**169 793**	**–**	**169 793**
Overall					
Post	–	3 279 339	11 917 580	–	15 196 918
Non-post	1 828 219	6 779 651	39 039 243	3 901 537	51 548 652
Subtotal	**1 828 219**	**10 058 990**	**50 956 823**	**3 901 537**	**66 745 570**

Table 3
Percentage of biennial budget expended as at 1 November 2018

	Chambers	*Office of the Prosecutor*	*Registry*	*Liabilities: pensions of former judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, and after-service health insurance for former staff of both Tribunals*	*Mechanism*
Arusha					
Post	–	39.8	36.8	–	37.5
Non-post	21.3	21.1	35.5	35.5	33.1
Subtotal	**21.3**	**31.1**	**36.1**	**35.5**	**35.0**
The Hague					
Post	–	38.9	40.5	–	40.2
Non-post	38.9	42.8	39.0	42.0	39.7
Subtotal	**38.9**	**42.1**	**39.2**	**42.0**	**39.7**
New York					
Post	–	–	47.8	–	47.8
Non-post	–	–	–	–	–
Subtotal	**–**	**–**	**47.8**	**–**	**47.8**
Office of Internal Oversight Services					
Post	–	–	31.8	–	31.8
Non-post	–	–	36.7	–	36.7
Subtotal	**–**	**–**	**35.1**	**–**	**35.1**
Overall					
Post	–	39.5	38.2	–	38.5
Non-post	36.2	37.0	38.2	–	38.0
Total	**36.2**	**37.8**	**38.2**	**38.8**	**38.1**

Annex II

Progress report of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, Serge Brammertz, for the period from 16 May to 15 November 2018

I. Overview

1. The Prosecutor submits this thirteenth progress report pursuant to Security Council resolution 1966 (2010), covering developments between 16 May and 15 November 2018.

2. During the reporting period, the Office of the Prosecutor of the Mechanism continued to focus on its three priorities: (a) the expeditious completion of trials and appeals; (b) locating and arresting the eight remaining fugitives indicted by the International Criminal Tribunal for Rwanda; and (c) assisting national jurisdictions prosecuting international crimes committed in Rwanda and the former Yugoslavia. The Office relies on the full cooperation of States to successfully carry out its mandate in those areas.

3. The Office of the Prosecutor remained engaged in intense trial and appeal work during the reporting period. The trial in the *Stanišić and Simatović* case continued, and the Prosecution is nearing the completion of its evidence-in-chief. The Office also presented its oral appeal arguments in the *Karadžić* case and neared the completion of the preparation of its written appeal arguments in the *Mladić* case. As previously reported, in addition to the trial and appeal activity in The Hague, the Office processed at both branches a high volume of other litigation arising from completed cases.

4. In an important development, the Office of the Prosecutor filed, and the single judge confirmed, a new indictment in the case *Prosecutor v. Turinabo et al.* The five accused, who are nationals of Rwanda, are charged with three counts of contempt of court and incitement to commit contempt of court. The indictment is the result of a previously confidential investigation by the Office arising from the related review proceedings in the *Ngirabatware* case. The Office emphasizes its determination to ensure the protection of witnesses by investigating and prosecuting efforts to interfere with witnesses and expresses its gratitude to the Government of Rwanda and its Prosecutor General for their cooperation.

5. The Office of the Prosecutor continued its efforts to locate and track the remaining fugitives. During the reporting period, prior intelligence and investigative activities generated some actionable leads, which now makes it necessary for the relevant Governments to provide cooperation. The Office also continued to work with partners to gather and analyse additional intelligence on fugitive support networks. The Office expresses its continued appreciation to the International Criminal Police Organization (INTERPOL), Member States and other partners for supporting the Office's efforts to bring the remaining fugitives to justice.

6. Regarding national prosecutions of war crimes committed in Rwanda, the Office of the Prosecutor, within existing resources, continued to monitor cases referred to Rwandan and French authorities, to provide national justice sectors with access to the evidence collection of the Mechanism and to support national accountability for those crimes. In that regard, there were important developments in the two cases referred in 2007 by the International Criminal Tribunal for Rwanda to France for prosecution, which remain pending more than 10 years later.

7. Regarding national prosecutions of war crimes committed in the former Yugoslavia, the Office of the Prosecutor continued to support the further

implementation of the completion strategy of the International Tribunal for the Former Yugoslavia. With the Tribunal's closure, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. At the request of Governments and stakeholders in the region, the Office of the Prosecutor continued to provide assistance, particularly by providing access to the Office's evidence and expertise.

8. In managing its work, the Office of the Prosecutor continued to be guided by the views and requests of the Security Council as set forth in, inter alia, paragraphs 18 to 20 of its resolution 2256 (2015) and paragraphs 7 and 8 of its resolution 2422 (2018).

II. Trials and appeals

9. During the reporting period, the Office of the Prosecutor worked on one trial (*Stanišić and Simatović*) and two appeal proceedings (*Karadžić* and *Mladić*) arising from cases transferred from the International Tribunal for the Former Yugoslavia pursuant to the statute and transitional arrangements of the Mechanism.

10. The Office of the Prosecutor further completed an intensive investigation of suspected contempt of court arising from the review proceeding in the *Ngirabatware* case. The investigation resulted in the indictment of five accused.

11. This judicial activity is temporary in nature, and the Office is undertaking all steps under its control to expedite the completion of those proceedings.

A. Update on the progress of trials

12. On 15 December 2015, the Appeals Chamber of the International Tribunal for the Former Yugoslavia reversed the trial judgment in the *Stanišić and Simatović* case and ordered the case to be retried on all counts. Pursuant to the statute and transitional arrangements of the Mechanism, the retrial is being conducted by the Mechanism. The trial proceedings in the case commenced on 13 June 2017.

13. Since the beginning of the Prosecution's case-in-chief in June 2017, the Prosecution has led the evidence of 50 witnesses in court, the majority of whom were cross-examined by the Defence. The Prosecution also tendered and the Chamber admitted the written evidence of 73 witnesses. The Chamber admitted 2,679 Prosecution exhibits totalling 50,869 pages. The Prosecution filed and litigated 81 motions for the admission of evidence. The Prosecution also responded to 53 motions filed by the Defence in the case.

14. During the reporting period, the Prosecution completed the presentation of all its witnesses except for one. The Prosecution's final witness is now scheduled to be heard the first week of December, shortly after the end of the reporting period. A Prosecution motion seeking to challenge the Trial Chamber's decision to limit the evidence the Prosecution is allowed to lead is currently pending with the Appeals Chamber. In addition, there are a number of pending Prosecution motions for the admission of documentary evidence. Subject to the scheduling of the final remaining Prosecution witness and rulings on these pending matters, it is anticipated that the Prosecution case will conclude by the end of 2018.

B. Update on the progress of appeals

1. *Karadžić*

15. On 24 March 2016, the Trial Chamber of the International Tribunal for the Former Yugoslavia unanimously convicted Radovan Karadžić for genocide, crimes against humanity and war crimes and sentenced him to a term of imprisonment of 40 years. On 5 December 2016, the Office of the Prosecutor filed its appeal brief against the trial judgment. The Office identified four grounds of appeal, including against the acquittal for genocide in 1992 and the imposed sentence. The Defence also filed its appeal brief, which set out 50 grounds of appeal. The Office completed the written appeals briefing on 6 April 2017 and presented its oral appeal arguments at the hearing held on 23 and 24 April 2018. During the hearing, the Prosecution made oral submissions in relation to both Karadžić's appeal and its own appeal. Both sets of submissions involved complex matters of fact and law.

16. During the reporting period, the Office continued to litigate a high volume of matters in relation to the *Karadžić* appeal, including eleventh hour motions to disqualify judges from the case, access motions and other issues.

2. *Mladić*

17. On 22 November 2017, a Trial Chamber of the International Tribunal for the Former Yugoslavia unanimously convicted Ratko Mladić of genocide, terror, persecution, extermination, murder, unlawful attacks on civilians, deportation, inhumane acts and hostage-taking and sentenced him to life imprisonment. On 22 March 2018, the Office of the Prosecutor filed its notice of appeal against the trial judgment. The Office identified two grounds of appeal, both of which related to the acquittal for genocide in relation to events in 1992. The Defence also filed its notice of appeal on the same date, which set out nine grounds of appeal.

18. During the reporting period, the Office of the Prosecutor worked intensively to efficiently complete the preparation of its written appeal arguments in accordance with court-established deadlines. The Office filed confidentially its appellant's brief on 6 August 2018 and filed the public redacted version on 7 August. On 14 November, the Office filed its response brief to the Defence appeal. It is anticipated that written appellate briefings in the case will be completed before the end of the year with the filing of both parties' reply briefs. In addition to that work, the Office also litigated a high volume of other matters in the case, including motions to disqualify judges.

C. Contempt proceedings

19. Under article 14 of the statute, the Office of the Prosecutor is mandated to investigate and prosecute contempt of court offences under article 1, paragraph 4, of the statute. The effective investigation and prosecution of contempt of court and breaches of witness protection measures are essential to protect witnesses and maintain the integrity of proceedings conducted by the Mechanism, the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.

20. During the course of preparations for the review proceedings in the *Ngirabatware* case, the Office uncovered evidence of criminal interference with protected witnesses aimed at overturning the final conviction of Augustin Ngirabatware. Over the past year, the Office conducted extensive investigations.

21. As a result, on 14 June 2018, the Office of the Prosecutor filed confidentially an indictment charging five suspects with three counts of contempt of court and

incitement to commit contempt of court. On 24 August, the single judge confirmed the indictment in the case *Prosecutor v. Turinabo et al.* and issued warrants of arrest. The indictment charges four Rwandan nationals, namely, Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana and Marie Rose Fatuma, with participation in a joint criminal enterprise to overturn the conviction of Augustin Ngirabatware. It is alleged that they directly, and through intermediaries, interfered with witnesses who had given evidence in Ngirabatware's trial and with witnesses in the related *Ngirabatware* review proceeding. In addition, the indictment charges Dick Prudence Munyeshuli, an investigator on Ngirabatware's former defence team, and Maximilien Turinabo with violation of court orders protecting witnesses.

22. On 3 September 2018, Rwandan police, in cooperation with the Office of the Prosecutor, arrested all five accused and executed judicial orders of the Mechanism to search for and seize evidence. The accused were transferred to the custody of the Mechanism on 11 September and are currently detained in the United Nations Detention Facility in Arusha.

23. Following the arrests, the Office of the Prosecutor has been engaged in intensive preparations and litigation in relation to both the *Turinabo et al.* contempt case and the closely related *Ngirabatware* review proceeding. Of particular importance, the single judge *proprio motu* initiated referral proceedings to determine whether the case against Turinabo and his co-accused should be referred to Rwanda for trial. The Government of Rwanda has taken the position that while it could be referred to Rwanda for trial, it is in the interests of justice that the case be tried by the Mechanism. The accused have opposed referral. The Office has argued that the conditions for referral are met and that the single judge could find that the interests of justice and efficiency of the proceedings favour referral of the case to Rwanda for trial. The parties are now awaiting the single judge's decision on referral.

24. The Office of the Prosecutor notes that it has been able to absorb the extensive work required to investigate, prepare the indictment, adhere to disclosure obligations and conduct pretrial litigation in the case within existing staff resources, particularly through the use of the "one office" policy. By flexibly deploying staff from both the Arusha branch and the branch in The Hague, the Office was able to quickly respond to this unexpected judicial activity at no additional staff costs. The Office will endeavour to continue addressing the associated workload within existing resources to the greatest extent possible. At the same time, should the *Turinabo et al.* case not be referred to Rwanda for trial, the resource requirements associated with a five-accused trial may be greater than the Office can absorb.

25. In the related *Ngirabatware* review proceeding, the review hearing previously scheduled for 24 to 28 September 2018 has been postponed at the request of the Defence. No date has been set for the hearing. The Appeals Chamber has requested submissions from the Office and the Defence as to whether the prior decision to hold a review hearing should be reconsidered in the light of the Defence's apparent unwillingness to proceed until the completion of the *Turinabo et al.* case.

D. Cooperation with the Office of the Prosecutor

26. The Office of the Prosecutor continues to rely on the full cooperation of States to successfully complete its mandate. The Office's access to documents, archives and witnesses is critical for ongoing trial and appeal proceedings of the Mechanism, as well as in relation to locating and arresting fugitives and witness protection.

27. During the reporting period, cooperation by Bosnia and Herzegovina, Croatia and Rwanda with the Office of the Prosecutor remained satisfactory. In relation to Serbia, trial proceedings in the *Stanišić and Simatović* case were slightly delayed

pending the necessary waiver from Serbia for the final Prosecution witness. The waiver has now been granted, and the Prosecution's final witness is scheduled to testify during the first week of December. Particularly as the Defence commences the presentation of its evidence in *Stanišić and Simatović*, assistance from Serbia and other countries continues to be required, and the Office fully expects that its requests for assistance will be promptly and adequately processed.

28. Cooperation and support from States outside Rwanda and the former Yugoslavia, as well as from international organizations, remains integral to the successful completion of Mechanism activities. The Office of the Prosecutor again acknowledges the support it received during the reporting period from Member States and international organizations, including the United Nations and its agencies, the European Union, the North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe and INTERPOL.

29. The international community continues to play an important role in providing incentives for States to cooperate with the Mechanism and undertake national prosecutions of war crimes. The policy of conditionality of the European Union, linking membership progress to full cooperation with the International Tribunal for the Former Yugoslavia and with the Mechanism, remains a key tool for ensuring continued cooperation with the Mechanism and consolidating the rule of law in the former Yugoslavia. Assistance is also increasingly needed to support the national prosecution of war crime cases in Rwanda and the countries of the former Yugoslavia.

E. Conditional early release

30. As reported in the tenth (S/2017/434), eleventh (S/2017/971) and twelfth (S/2018/471) progress reports of the Mechanism, the Office of the Prosecutor proposed in early 2016 to amend rule 151 to establish a programme for conditional early release. The Office is gravely concerned that nearly all convicted persons have been released unconditionally after serving only two thirds of their sentence. It is further deeply distressing, particularly to the victims, that those granted early release often deny the crimes and their criminal responsibility immediately upon release. The Office's proposed amendments would have addressed those legitimate concerns by creating a conditional early release programme, which would have aligned the rules of the Mechanism with best practices and established sentencing principles.

31. While the proposal of the Office to amend rule 151 was not adopted by the plenary of the judges, the Office took note of the Security Council debate on 6 June 2018. The Office also welcomed Council resolution 2422 (2018), in which the Council encouraged the Mechanism to consider a conditional early release regime. In the light of the Council's guidance, the Office of the Prosecutor made numerous submissions during the reporting period opposing early release of specific convicted persons and requesting the President to consider imposing conditions for any early release he might nonetheless decide to grant. The Office will continue to be mindful of every opportunity in specific cases to bring its views and concerns to the attention of the President and register its opposition where warranted to the unconditional early release of persons convicted of genocide, crimes against humanity and war crimes.

III. Fugitives

32. As at the end of the reporting period, eight fugitives indicted by the International Criminal Tribunal for Rwanda remained at large. The Office of the Prosecutor continued its efforts to locate and arrest the three fugitives whose cases will be tried by the Mechanism: Félicien Kabuga, Protais Mpiranya and Augustin Bizimana. The

Office also continued to search for information on the whereabouts of the five fugitives who are currently expected to be brought to trial in Rwanda following their arrest: Fulgence Kayishema, Charles Sikubwabo, Aloys Ndimbati, Ryandikayo and Phénéas Munyarugarama.

33. During the reporting period, prior intelligence and investigative activities generated some actionable leads. The Office accordingly approached Member States for assistance and cooperation.

34. Earlier in 2018, the Prosecutor visited Harare to discuss with senior Zimbabwean officials relevant intelligence obtained by the Office and ways to strengthen cooperation. It was agreed that the Office and the Zimbabwean authorities would establish a joint task force to coordinate further investigative activities. The Prosecutor visited Harare again from 12 to 14 November 2018 and expressed his appreciation to the Zimbabwean authorities for their full commitment to cooperation and adherence to Zimbabwe's international legal obligations.

35. During the reporting period, in the light of information obtained by the Office of the Prosecutor and confirmed by the INTERPOL National Central Bureau for South Africa, the Office submitted an urgent request for assistance to the South African Minister of Justice. The Office is still awaiting a reply.

36. As provided for in the statute of the Mechanism and reinforced by the Security Council in numerous resolutions, including, most recently, resolution 2422 (2018), all States Members of the United Nations have an international legal obligation to provide cooperation to the Office of the Prosecutor in its efforts to locate and apprehend the remaining fugitives. The Office expresses its appreciation to all Member States that support its efforts and looks forward to continuing to work in close cooperation with them. The Office also reiterates that under the War Crimes Rewards Programme of the Government of the United States of America, individuals (not including government officials) who provide information leading to the arrest of a fugitive may be eligible for a monetary reward in an amount of up to $5 million.

IV. Assistance to national war crime prosecutions

37. National prosecutions are now essential to achieve greater justice for the victims of war crimes, crimes against humanity and genocide committed in Rwanda and the former Yugoslavia. The Office of the Prosecutor is mandated to assist and support national prosecutions of those crimes, in accordance with the completion strategies of the Tribunals, Security Council resolution 1966 (2010) and the statute of the Mechanism. The effective prosecution of the crimes committed is fundamental to building and sustaining the rule of law, establishing the truth of what occurred and promoting reconciliation in the affected countries. Third-party States are also undertaking prosecutions against suspects who are present in their territory for crimes committed in Rwanda and the former Yugoslavia.

38. The Office of the Prosecutor continued its efforts, within existing resources, to support, monitor and advise national judicial authorities prosecuting war crimes cases arising from the conflicts in Rwanda and the former Yugoslavia. The Office maintains an ongoing dialogue with all relevant counterparts and undertakes a range of initiatives to assist and build capacity in national criminal justice sectors.

A. War crimes committed in Rwanda

39. Five cases referred by the International Criminal Tribunal for Rwanda under rule 11 bis are currently being processed in the national courts of France and Rwanda.

The cases against Wenceslas Munyeshyaka and Laurent Bucyibaruta were referred to France in 2007. Jean Uwinkindi, Bernard Munyagishari and Ladislas Ntaganzwa were transferred to Rwanda in 2012, 2013 and 2016, respectively. All proceedings are ongoing.

1. Completion strategy of the International Criminal Tribunal for Rwanda

40. All those suspected of committing crimes during the Rwandan genocide must be brought to justice. Consistent with the principle of complementarity and national ownership of post-conflict accountability, prosecutions by the Rwandan justice sector in accordance with international due process and fair trial standards are in principle the most advantageous accountability mechanism. In that regard, the Office of the Prosecutor encourages the international community to continue its efforts to support and strengthen the Rwandan criminal justice sector by providing financial assistance and capacity-building as may be needed.

41. As previously reported in the eleventh progress report, a number of States are extraditing Rwandan nationals suspected of genocide to Rwanda for trial. The extraditions relied upon and are consistent with the determination of the International Criminal Tribunal for Rwanda and the Mechanism that the conditions for fair trials be met in Rwanda. It is hoped that the decisions of the Tribunal and the Mechanism in that regard are given full consideration and deference in national extradition proceedings. The Office of the Prosecutor stands ready to provide support and assistance to third-party States considering requests by Rwanda for extradition, as well as third-party States that are prosecuting in their own domestic courts Rwandan nationals suspected of genocide. It is essential that those who bear individual criminal responsibility for crimes committed during the genocide do not find safe haven anywhere in the world.

2. Genocide denial

42. Twelve years ago, the Appeals Chamber of the International Criminal Tribunal for Rwanda held that the facts of the genocide committed in Rwanda were established beyond any dispute and thus constituted facts of common knowledge. In particular, the Appeals Chamber concluded that it was a universally known fact that, between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group. Establishing that and other facts about the Rwandan genocide was one of the Tribunal's most important contributions to re-establishing peace and security in Rwanda and promoting reconciliation between the affected communities.

43. Yet today, genocide denial, in all of its forms and manifestations, continues. Efforts to minimize the scale of the death and destruction or point to other factors to detract attention from the facts of the genocide are intolerable and unacceptable. There are no other facts or circumstances that in any way alter the truth that over just 100 days in Rwanda, hundreds of thousands of innocent people were senselessly murdered, tortured, raped and forced to flee their homes. At the same time, genocide ideology continues to present clear risks to international peace and security. Ideologies of discrimination, division and hate are promoting conflict and crimes around the globe.

44. The Office of the Prosecutor firmly rejects genocide denial and is committed to promoting education and remembrance as key tools in the fight against genocide ideology. In such efforts, the Office will zealously investigate and prosecute all those who interfere with witnesses with the aim of undermining the established facts of the genocide committed in Rwanda. Such contempt of court is a form of genocide denial and must be opposed.

3. Cases referred to France

45. Wenceslas Munyeshyaka, an ordained Catholic priest, was indicted by the International Criminal Tribunal for Rwanda in July 2005 on four counts of genocide, rape as a crime against humanity, extermination as a crime against humanity and murder as a crime against humanity. The indictment was referred by the Tribunal to France for trial on 20 November 2007. As previously reported, the investigation by French authorities in the *Munyeshyaka* case has not resulted in charges being brought against the suspect. On the recommendation of the Paris Public Prosecutor, the investigating judge on 2 October 2015 issued a decision to dismiss the case, which the civil parties appealed. The appeal hearing took place before the Investigation Chamber of the Court of Appeals of Paris on 31 January 2018. On 21 June, the Investigation Chamber of the Court of Appeals of Paris confirmed the discharge order on the grounds that there was insufficient evidence to prosecute. The proceedings are now before the Court of Cassation, as seven appeals have been lodged by the civil parties. A decision is not expected for some months.

46. Recent developments in the *Bucyibaruta* case, however, have been more positive. Laurent Bucyibaruta, the prefect of Gikongoro Prefecture, was indicted by the International Criminal Tribunal for Rwanda in June 2005 on six counts of direct and public incitement to commit genocide, genocide, complicity in genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. The indictment was referred by the Tribunal to France for trial on 20 November 2007. The investigation by French authorities has been completed. On 4 October 2018, the Public Prosecutor filed his final submission asking for partial discharge and transfer to the Court of Cassation, requesting the investigating judge to order an indictment for genocide, complicity in genocide and complicity in crimes against humanity. It will be some months before a decision by the investigating judge on whether to proceed to trial can be expected.

47. Although the Office of the Prosecutor recognizes the challenges the French judiciary has faced in processing these cases, it trusts that French authorities will prioritize them and ensure that further decisions are taken expeditiously.

4. Cases referred to Rwanda

48. Jean Uwinkindi, a pastor in the Pentecostal Church, was indicted by the International Criminal Tribunal for Rwanda in September 2001 on three counts, namely, genocide, conspiracy to commit genocide and extermination as a crime against humanity. He was transferred to Rwanda for trial on 19 April 2012, and the trial commenced on 14 May 2012. On 30 December 2015, the High Court of Rwanda issued its trial judgment, convicting Uwinkindi and sentencing him to life imprisonment. Appeal proceedings are under way.

49. Bernard Munyagishari, a local leader in the *Mouvement républicain national pour la démocratie et le développement* party, was indicted by the International Criminal Tribunal for Rwanda in September 2005 on five counts, namely, conspiracy to commit genocide, genocide, complicity in genocide, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 24 July 2013. On 20 April 2017, the High Court issued its trial judgment, convicting Munyagishari of genocide and murder as a crime against humanity, acquitting him of rape as a crime against humanity and sentencing him to life imprisonment. Appeal proceedings are under way.

50. Ladislas Ntaganzwa, mayor of Nyakizu commune, was indicted by the International Criminal Tribunal for Rwanda in June 1996, with the amended indictment charging him with five counts, namely, genocide, direct and public

incitement to commit genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 20 March 2016. Trial proceedings are under way.

B. War crimes committed in the former Yugoslavia

1. Completion strategy of the International Tribunal for the Former Yugoslavia

51. As the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia emphasized in its final completion strategy report (S/2017/1001), the strategy has always foreseen that the end of the Tribunal's mandate would not be the end of justice for war crimes committed in the former Yugoslavia, but the beginning of the next chapter. With the closure of the Tribunal, further accountability for the crimes now depends fully on national judiciaries in the countries of the former Yugoslavia. The Tribunal's work has created a solid foundation for national judiciaries to continue implementing the completion strategy and securing more justice for more victims.

52. More than 15 years after the adoption of the completion strategy, national judiciaries have achieved progress in accountability for war crimes, albeit unevenly between different countries. Looking forward, national judiciaries continue to face a very large backlog of war crime cases to process, with several thousand cases remaining across the region. Most importantly, much more remains to be done to bring to justice senior- and mid-level suspects who worked together with or were subordinate to senior war criminals prosecuted and convicted by the International Tribunal for the Former Yugoslavia.

53. With the closure of the Tribunal, it is essential to ensure that there is continuity in engagement with the national war crimes justice process and that support to national judiciaries is further strengthened. For national courts to succeed in continuing the implementation of the completion strategy, it is critical that international organizations such as the United Nations and European Union and individual Member States continue to fully support and strengthen their assistance to national war crimes justice.

2. Regional judicial cooperation

54. Judicial cooperation between the countries of the former Yugoslavia is essential to ensure that those responsible for war crimes are held accountable. Many suspects may not be present in the territory where they are alleged to have committed the crimes and cannot be extradited to the territorial State for prosecution. Over the past several years, the Offices of the Prosecutor of the International Tribunal for the Former Yugoslavia and of the Mechanism have repeatedly called attention to the negative trends in regional judicial cooperation in war crimes justice.

55. The Office of the Prosecutor of the Mechanism deeply regrets that it must report that regional judicial cooperation in war crimes matters among the countries of the former Yugoslavia is at its lowest level in years and faces increasingly immense challenges. Decisive action is needed to reverse the current negative trends and ensure that war criminals do not find safe haven in neighbouring countries. The solutions are available and well-known; the commitment and willingness to use them are now required.

56. Judicial cooperation between Croatia and its neighbours illustrates well what is happening throughout the region. During its accession process to the European Union, Croatia was at the forefront of efforts to improve judicial cooperation in war crime matters. The then State Attorney of Croatia initiated the so-called Brijuni process to

bring together war crime prosecutors from throughout the region to discuss cooperation and how it could be improved. Croatian prosecutors strongly supported the development of protocols between the war crime prosecution services of the region as a key tool to overcome legal barriers and facilitate effective cooperation. With the strong support of Croatian authorities, meaningful improvements in regional cooperation were made and prosecutors began to adopt a more regional approach.

57. In contrast, Croatian government policy today has the effect of creating new barriers to cooperation, such as the Government's conclusion of 2015 refusing to provide cooperation in certain war crime cases. Croatia continues to prosecute many cases in absentia and does not appear to be working with the countries in which the suspects reside to bring them to trial. Croatian authorities no longer favour established region-wide solutions such as the protocols between prosecution offices and are instead pursuing separate bilateral arrangements with each neighbouring country.

58. Unfortunately, the fact that the Croatian authorities are providing less cooperation is causing important delays in investigations and prosecutions in neighbouring countries. At the same time, in the eyes of the regional public, it seems that while Croatian courts continue to seek justice for Croatian victims, there is little apparent progress in processing cases against Croatian nationals indicted by courts in neighbouring countries. The perception of partial justice in turn produces reactions in other countries in the region. If not addressed, an increasingly negative cycle may develop, which will ultimately only result in less justice for the victims. The Office calls upon Croatia to again demonstrate its leadership in regional judicial cooperation and serve as a model for the region.

59. The challenges to regional judicial cooperation do not arise only in relation to Croatia. In the tenth and twelfth progress reports, the Office of the Prosecutor of the Mechanism reported that judicial cooperation between Serbia and Kosovo[3] in war crime matters had broken down. The situation has not improved and creates an undeniable barrier to justice. While the Office recognizes the productive cooperation that has developed and continued between the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of Serbia, much more still remains to be done, particularly in transferring complex cases involving senior- and mid-level officials.

60. In order to reverse those trends, strong support from the international community in favour of regional judicial cooperation is essential. It will be important to encourage authorities throughout the region to take concrete steps to remedy the situation, including by bringing political interference in the justice process to a halt, reinvigorating the use of existing regional solutions and providing public support to judicial cooperation. European standards and practices remain the best guide to how to put regional judicial cooperation in war crime matters back on the right track.

3. Denial and glorification

61. The Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Mechanism have regularly reported that the denial of crimes and non-acceptance of facts established in the judgments of the Tribunal are widespread throughout the region. Convicted war criminals are often glorified as heroes. Students in different countries, as well as within Bosnia and Herzegovina itself, are taught widely different and irreconcilable versions of the recent past. The Office has expressed its grave concern in that regard and called for

[3] All references to Kosovo shall be understood as being in full compliance with Security Council resolution 1244 (1999).

urgent attention to those issues. Unfortunately, developments during the reporting period again demonstrated that the challenge is severe.

62. There were two concerning instances during the reporting period in which Defence Ministers ignored the most serious war crimes and glorified convicted war criminals. In Serbia, the Ministry of Defence published and exhibited at the prestigious Belgrade Book Fair the memoirs of convicted war criminal General Nebojša Pavković, who is currently serving his 22-year sentence for crimes against humanity. As Commander of the Third Army of the Armed Forces of Yugoslavia, Pavković oversaw the ethnic cleansing and forcible displacement of at least 700,000 civilians in just a few months. In response to criticisms, the Serbian Minister of Defence explained that there was nothing to be ashamed of, that military commanders such as Pavković had the right to explain their truth and that military strategists around the world would carefully read how Pavković had commanded his troops.

63. In Croatia, a ceremony was held to commemorate the 25th anniversary of the Medak Pocket operation. A commander of that operation, General Mirko Norac, was indicted by the International Tribunal for the Former Yugoslavia for crimes against humanity and war crimes, including persecution, murder, torture, terrorization of the predominately Serb civilian population, plunder and wanton destruction of cities, towns and villages. His case was referred to Croatia, where he was convicted and sentenced to seven years' imprisonment. General Norac was invited to the commemoration and recognized by the Croatian Minister of Defence, who stated that Croatia should be proud of the Medak Pocket operation and that he was glad that General Norac was in attendance at the commemoration.

64. Some political leaders in the region are working to overcome the legacy of the recent past. Earlier in 2018, the President of Croatia made an important visit to pay respects to the victims of both Ahmići and Križančevo Selo. The President of Serbia has committed to strengthening cooperation in the search for missing persons and promised to publicly call on all those with information about missing persons and mass graves to come forward. Unfortunately, such positive steps are undermined by irresponsible comments from other officials denying established crimes and glorifying convicted war criminals. It is particularly troubling when such statements are made by those responsible for exercising command and influence over today's armed forces. Instead of glorying war criminals, responsible officials should send the message that soldiers defend their countries with honour by fully respecting international humanitarian law.

4. Bosnia and Herzegovina

65. The Office of the Prosecutor of the Mechanism continued to enjoy positive discussions with the Acting Chief War Crimes Prosecutor of Bosnia and Herzegovina about continued cooperation in war crime justice. The Acting Chief Prosecutor underlined her desire for even closer cooperation and collaboration with the Office of the Prosecutor, including through assistance on concrete cases, strategic support and activities to transfer the lessons learned of the International Tribunal for the Former Yugoslavia. The Office of the Prosecutor of the Mechanism is committed to continuing to support the work of the Prosecutor's Office of Bosnia and Herzegovina, particularly in the mutual goal of successfully implementing the national war crimes strategy.

66. During the reporting period, the Prosecutor's Office of Bosnia and Herzegovina filed 16 indictments, with more indictments expected before the end of the year. The Prosecutor's Office continued to file important indictments in complex cases against senior- and mid-level officials, including against Atif Dudaković for crimes against humanity in the Bihać area. It also obtained important convictions during the

reporting period, including in the cases against Jovan Tintor for crimes against humanity in Vogošća, Mustafa Đelilović et al. in the so-called "Silos" case for crimes against Bosnian Serb and Bosnian Croat civilians and Nihad Bojadzić for crimes against Bosnian Croat civilians in Jablanica. The Office of the Prosecutor of the Mechanism expects further progress in the "rules of the road" cases initially reviewed by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia, which have been jointly identified as an important priority for action.

67. In relation to the so-called category II cases transferred from the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia to Bosnia and Herzegovina, as previously reported, all cases have been processed, and trials and appeals are under way. However, during the reporting period, a matter of serious concern developed in relation to the enforcement of the sentence against Marko Radić, a category II suspect. In 2011, Radić was convicted by the Court of Bosnia and Herzegovina for crimes against humanity, including the rape and sexual abuse of women and underage girls, and sentenced to 21 years of imprisonment. At his request, in early October 2018, the Ministry of Justice of Bosnia and Herzegovina approved Radić's transfer to Croatia to serve the remainder of his sentence. However, the Zagreb County Court reduced his sentence from 21 years to 12 years and six months, and he is now expected to be released later this year. It is very difficult for the victims and the public to understand how a sentence for such serious crimes could be reduced so dramatically solely as a result of transferring the enforcement of the sentence to Croatia. In addition, while the purpose of transferring the enforcement of sentences is to promote the social rehabilitation of convicted persons in a manner consistent with the ends of justice, it is not clear how that purpose will be achieved if Radić is released soon after the transfer.

68. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, significant results have been achieved so far in accountability for war crimes in Bosnia and Herzegovina. However, much more remains to be done. In recent years, the Prosecutor's Office of Bosnia and Herzegovina has issued a large number of significant indictments in complex cases involving senior- and mid-level suspects. Yet, prosecution offices at the State and entity levels continue to face an enormous backlog of cases, and efforts can still be further intensified. Authorities in Bosnia and Herzegovina, including the Ministry of Justice, can do more to vindicate the interests of victims and justice and should strengthen their engagement with victims from all communities. The Office of the Prosecutor of the Mechanism encourages further positive progress to prevent any regression and will continue working with the Prosecutor's Office of Bosnia and Herzegovina and other prosecution offices in the country.

5. Croatia

69. As in the eleventh and twelfth progress reports, the Office of the Prosecutor of the Mechanism is required to report to the Security Council that the Government of Croatia, by failing to withdraw its 2015 conclusion directing the Ministry of Justice not to provide judicial cooperation in certain war crime cases, regrettably continues to interfere politically in the justice process. As a result, a large and continually growing number of war crime cases against former members of Croatian and Bosnian Croat forces are frozen.

70. Despite the Office's direct engagement with the Croatian authorities, very little progress has been achieved over the past three years with respect to this Croatian policy and its negative impact. The policy is having the effect of promoting impunity at the expense of victims throughout the region, who deserve justice. No satisfactory explanations have been provided for the maintenance of the policy, and indeed none could be provided, particularly by a State member of the European Union. The

Government of Croatia should withdraw the policy immediately and allow the justice process to continue without further interference.

71. With respect to the category II case files transferred from Bosnia and Herzegovina and previously discussed in the ninth (S/2016/975), tenth, eleventh and twelfth progress reports, there has been no additional progress. In one case, a request for assistance remains unanswered by the Croatian Ministry of Justice after more than two years, and two other cases still have not been processed more than two years after the files were transferred to Croatia. The Office of the Prosecutor of the Mechanism again offered to host a meeting between Bosnian and Croatian prosecutors to resolve those issues, but the State Attorney's Office declined the offer. The Office of the Prosecutor is seriously concerned about the lack of progress and calls upon Croatian authorities to expedite the processing of those cases in close cooperation with the Prosecutor's Office of Bosnia and Herzegovina.

72. Separately, the Office of the Prosecutor reported in the ninth and twelfth progress reports that the *Glavaš* case, a category II case previously referred by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia to the State Attorney's Office of Croatia, was revoked by the Supreme Court of Croatia and remanded for retrial. The retrial commenced only in October 2017 and has not yet been completed.

73. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, significant efforts are needed to show that war crimes justice in Croatia is on the right track. The State Attorney's Office of Croatia continues to process a number of war crime cases. However, in recent years, most new cases are being prosecuted in absentia and predominately concern crimes committed by the Yugoslav People's Army or Serb forces. There has been less progress in the past few years in processing cases against suspects who are former members of Croatian or Bosnian Croat forces, particularly cases initiated in neighbouring countries. The Office of the Prosecutor of the Mechanism welcomes the appointment of the new State Attorney of Croatia, who reaffirmed his Office's commitment to independent and impartial justice for war crimes. The Office trusts that under his leadership, issues that have been identified will be resolved, and it continues to offer its full support in those efforts.

6. Serbia

74. The Office of the Prosecutor of the Mechanism held open and concrete discussions with the President of Serbia, the Minister of Justice of Serbia and the Chief War Crimes Prosecutor about outstanding issues and the continued cooperation of Serbian authorities with the Mechanism and its Office of the Prosecutor. It was agreed that the Serbian authorities would continue and strengthen cooperation with the Office of the Prosecutor as a means of supporting the implementation of the national war crimes strategy, the prosecutorial strategy for the investigation and prosecution of war crimes in Serbia for the period 2018–2023 and the action plan on chapter 23. It was further agreed that regional judicial cooperation in war crime matters was not satisfactory and that efforts needed to be made to improve cooperation as an important element in regional relations. While Serbia has not yet begun to achieve improved concrete results, many of the necessary preparations and resources are now in place. It was agreed that the Serbian authorities and the Office of the Prosecutor of the Mechanism would work together to expedite the processing of war crime cases in Serbia.

75. As reported in previous progress reports, the Office of the Prosecutor of the Mechanism and the Serbian authorities have had ongoing discussions regarding a number of issues, which were discussed again during the reporting period. The

Minister of Justice informed the Office that additional deputy prosecutors had been recruited and that more deputy prosecutors and legal assistants would be recruited before the end of the year. The Minister explained that the recruitments would strengthen the staffing of the Office of the War Crimes Prosecutor of Serbia, in line with the commitments made in the action plan on chapter 23 and the national war crimes strategy. The Chief War Crimes Prosecutor confirmed that with the additional staffing foreseen, her Office would have most of the human resources needed to carry out its responsibilities and implement the prosecutorial strategy. The Office of the Prosecutor of the Mechanism welcomes those developments, which will allow the Office of the War Crimes Prosecutor of Serbia to now start achieving improved results.

76. The Office of the Prosecutor of the Mechanism and the Serbian authorities continued to disagree about other matters. The *Djukić* case, raised in previous reports of the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and of the Office of the Prosecutor of the Mechanism, remains the subject of intense discussions. The Minister of Justice informed the Office that Novak Djukić, a convicted war criminal who has enjoyed safe haven in Serbia for almost three years after absconding from justice in Bosnia and Herzegovina, has now been declared medically unfit to participate in proceedings for approximately 10 to 12 months. Unfortunately, this is another instance where purported health issues are delaying the judicial process. In recent years, many war crime trials in Serbia have been delayed because the accused have claimed to be ill or have medical appointments on trial dates. For example, in the *Trnje* case, five out of seven trial dates in 2017 were postponed owing to the alleged ill health of one accused. Civil society organizations have identified a pattern in which members or former members of the military on trial for war crimes are admitted to hospitals shortly before hearing dates, only to be discharged soon thereafter. They have further noted that many instances concern the Military Medical Academy. The Office of the Prosecutor encourages the Serbian authorities to ensure that independent medical experts evaluate all claims of ill-health by persons accused of war crimes, in order to protect the integrity of the justice process.

77. Overall, and taking into account the completion strategy of the International Tribunal for the Former Yugoslavia, there are few concrete results in Serbia that can be easily identified, nearly three years after the adoption of the action plan on chapter 23 and the national war crimes strategy. Impunity for many well-established crimes remains the norm. With the adoption of the prosecutorial strategy and the strengthening of its human resources, it can now be expected that the Office of the War Crimes Prosecutor of Serbia will begin investigating, processing, indicting and prosecuting more cases, particularly against senior- and mid-level officials, at a higher rate and a higher quality. The Office of the War Crimes Prosecutor of Serbia must meet high expectations for meaningful justice, and the Office of the Prosecutor of the Mechanism is committed to continuing to provide needed assistance, including training and other forms of support.

C. Access to information and evidence

78. The Office of the Prosecutor possesses extensive evidence and invaluable expertise that can greatly benefit national justice efforts. The evidence collection relating to the former Yugoslavia comprises more than 9 million pages of documents and thousands of hours of audio and video records, most of which were not introduced into evidence in any proceeding of the International Tribunal for the Former Yugoslavia and thus are available only from the Office of the Prosecutor. The evidence collection relating to Rwanda comprises more than 1 million pages of

documents. The Office's staff members have unique insight into the crimes and the cases that can assist national prosecutors in preparing and proving their indictments.

79. During the reporting period, the Office of the Prosecutor continued to receive a high volume of requests for assistance from national judiciaries and international organizations.

80. In relation to Rwanda, the Office of the Prosecutor received six requests for assistance, all of which have been processed. In total, the Office handed over 7,083 pages of documentation.

81. In relation to the former Yugoslavia, the Office of the Prosecutor received 141 requests for assistance from 5 Member States and 2 international organizations, including 19 requests from the International Committee of the Red Cross (ICRC). A total of 83 requests for assistance were submitted by authorities in Bosnia and Herzegovina, 7 by Croatia, 1 by Montenegro and 14 by Serbia. In total, the Office handed over more than 1,200 documents. In addition, the Office filed a submission in relation to a request for variation of witness protective measures, which concerned a proceeding in Bosnia and Herzegovina. The Office continued to receive a high volume of requests for assistance during the reporting period and expects that an even larger volume of requests will be received in the future.

82. The joint European Union-Mechanism training project for national prosecutors and young professionals continued during the reporting period. Liaison prosecutors from Bosnia and Herzegovina, Croatia and Serbia are working with the Office of the Prosecutor to support the transfer of evidence and expertise to their home offices and national prosecutions of war crimes committed in the former Yugoslavia. Similarly, young professionals from those countries are interning with the Office of the Prosecutor, supporting ongoing Mechanism trials and appeals. The Office is grateful to the European Union for its consistent support to this important project and for recognizing the ongoing need to build capacities in national justice sectors.

D. Capacity-building

83. During the reporting period, the Office of the Prosecutor continued its efforts, within existing resources, to build capacity in national judiciaries prosecuting war crimes. The Office's capacity-building efforts focus on the Great Lakes region, East Africa and the former Yugoslavia. Strengthening national capacities supports the principle of complementarity and national ownership of post-conflict accountability.

84. The Serbian Ministry of Justice, Office of the War Crimes Prosecutor and Bar Academy have requested the Office of the Prosecutor to provide war crimes training to members of the Serbian judicial system. The first training session, on prosecuting conflict-related sexual violence crimes, will be held in March 2019 in Belgrade. The training will be based on the Office's publication *Prosecuting Conflict-related Sexual Violence at the ICTY*, which was translated into Bosnian-Croatian-Serbian. Additional training sessions are planned over the course of 2019.

85. Within the limits of its operational capacity and existing resources, the Office of the Prosecutor will continue to engage with training providers and donors to ensure that appropriate practical training on investigative and prosecutorial techniques in war crimes justice is made available. The Office expresses its deep gratitude to partners for providing financial, logistical and other support to enable its capacity-building and training efforts.

E. Missing persons

86. The search for persons still missing from the conflicts in the former Yugoslavia continues to be consistently identified as one of the most important outstanding issues. Significant results have been achieved, with approximately 30,000 missing persons found and identified. Unfortunately, more than 10,000 families still do not know the fates of their loved ones. The search for and exhumation of mass graves and the subsequent identification of the remains need to be accelerated. Further progress on those issues is a humanitarian imperative and fundamental to reconciliation in the former Yugoslavia. Victims from all sides of the conflicts must be located, identified and returned to their families.

87. During the reporting period, the Office of the Prosecutor took significant steps to strengthen its support to the search for missing persons in the former Yugoslavia, at the request of partners and the families of the missing. On 11 October 2018, the Office of the Prosecutor and ICRC signed a memorandum of understanding to promote their cooperation in the search for persons. This important agreement will enable ICRC to access the Office's evidence collection to obtain information that may assist in clarifying the fate and whereabouts of persons who are still missing. The Office and ICRC will also work jointly, in accordance with their respective mandates, to analyse information, identify new leads and provide files to domestic missing persons authorities for action. In all their joint efforts, the Office and ICRC will continue and strengthen their assistance to local authorities in the countries of the former Yugoslavia. The increased cooperation between the Office and ICRC builds on prior informal, joint efforts that led to the successful discovery of a number of mass graves and is in the context of the five-year strategy of ICRC to intensify the search for missing persons in the former Yugoslavia.

88. The Prosecutor held a number of meetings with associations of families of the missing throughout the region. The families expressed their strong support to the Office's joint efforts with ICRC and its strengthened assistance to local missing persons authorities. The families agreed with ICRC and the Office of the Prosecutor that the search for missing persons is a humanitarian imperative and expressed their hope that all Governments in the region would increase their activities and cooperation and prevent the politicization of the issue, as recently pledged in the Joint Declaration on Missing Persons adopted at the Western Balkans Summit held in London. The Prosecutor noted that while many successful results had already been achieved, it was clear that much more remained to be done, as too many families were still suffering. The Prosecutor also noted that the denial of crimes and the glorification of war criminals undermined the search for missing persons, while underscoring the commitment of the Office to undertaking every effort within its ability to clarify the fate and whereabouts of those still missing.

V. Other residual functions

89. During the reporting period, the Office of the Prosecutor continued to carry out its responsibilities in respect of other residual functions, namely, the protection of victims and witnesses, contempt of court and false testimony, the enforcement of sentences, the review of judgments and the management of records and archives.

90. The volume of litigation before the Mechanism arising from completed cases remains higher than anticipated. During the reporting period, the Office of the Prosecutor responded to a large number of requests for variation of protective measures and motions for access to case files. As discussed above, the Office continued to investigate and litigate the *Ngirabatware* review proceeding at the

Arusha branch, while also responding to a number of additional filings in relation to other potential review proceedings. Those developments put a strain on the Office's limited resources. The Office was nonetheless able to address the unforeseen requirements within existing resources, particularly owing to the "one office" policy. The Office will continue to monitor the volume of review and related motions and report as appropriate.

VI. Management

A. Overview

91. The Office of the Prosecutor is committed to managing its staff and resources in line with the instruction of the Security Council that the Mechanism be a "small, temporary and efficient structure". The Office continues to be guided by the views and requests of the Council as set forth in, inter alia, paragraphs 18 to 20 of resolution 2256 (2015) and paragraphs 7 and 8 of resolution 2422 (2018).

92. An important part of those efforts is the Prosecutor's "one office" policy of integrating the staff and resources of the Office across both branches. Under the policy, staff and resources are flexibly deployed to work at either branch as necessary. The policy proved its value again during the reporting period with the unexpected workload and requirements generated by the investigation and preparation of the *Turinabo et al.* contempt case and the related preparations for the *Ngirabatware* review proceeding. Through the "one office" policy, the Office was able to absorb additional staff requirements for ad hoc judicial activities within existing resources.

B. Audit reports

93. During the reporting period, OIOS conducted a confidential audit of the management of the resources of the tracking team. OIOS made five recommendations, all of which were accepted. The Office anticipates that the recommendations will be closed in the coming months. The Office appreciates the assistance and constructive advice provided by OIOS.

94. Regarding the OIOS report entitled "Evaluation of the methods and work of the International Residual Mechanism for Criminal Tribunals" (S/2018/206), OIOS made one recommendation specifically to the Office of the Prosecutor. The Office accepted the recommendation to conduct a survey on staff morale, which is anticipated to be completed before the end of the year.

VII. Conclusion

95. During the reporting period, the Office of the Prosecutor engaged in intensive efforts to locate and arrest the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda. Intelligence and investigative activities generated some actionable leads, and the Office is now working closely with relevant Governments. The Office of the Prosecutor underscores its commitment to arresting the remaining fugitives as soon as possible. State cooperation will be essential to achieve this goal, and the Office appreciates the support already being provided.

96. The Office of the Prosecutor continued to litigate one trial and two appeals before the Mechanism, all of which were transferred from the International Tribunal for the Former Yugoslavia in accordance with the statute and transitional arrangements of the Mechanism. In addition to trial and appeal activity in The Hague,

the Office processed, at both branches, a high volume of other litigation arising from completed cases. In particular, the Office filed an indictment in the case *Prosecutor v. Turinabo et al.*, charging the five accused with three counts of contempt of court and incitement to commit contempt of court. Using the "one office" approach, the Office was able to address unexpected judicial activity within existing resources and will continue to allocate and manage its resources flexibly in order to comply with all imposed deadlines.

97. Significant challenges remain with respect to national prosecutions of war crimes in Rwanda and the former Yugoslavia. Regarding war crimes committed in Rwanda, there were important developments in the two cases referred in 2007 by the International Criminal Tribunal for Rwanda to France for prosecution. Regarding war crimes committed in the former Yugoslavia, the Office of the Prosecutor focused its activities on ensuring continuity following the closure of the International Tribunal for the Former Yugoslavia. National authorities now have full responsibility for continuing the implementation of the completion strategy and securing more justice for more victims. The Office of the Prosecutor remains committed to providing its full support, including by responding to requests for assistance, transferring knowledge gained and lessons learned and providing assistance on concrete cases.

98. In all of its endeavours, the Office of the Prosecutor relies upon and gratefully acknowledges the support of the international community, in particular that of the Security Council.